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Gender, Crime and Discretion in Yorkshire, 1735-1775

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Abstract

This thesis explores the gendered exercise of discretion at the various stages of the judicial process in the quarter session and assize courts of Yorkshire between 1735 and 1775. It examines the predicament of both sexes in relational terms at each stage of the judicial process. Part one involves an examination of judicial processes from pre-trial to sentencing, while part two focuses on how those processes operated with respect to the selected offences of homicide, non-fatal violence, theft and riot.

This thesis augments knowledge in the historical argument regarding gender and crime for the period between those examined by Garthine Walker and Deirdre Palk and extends the coverage provided by Peter King. It is argued that contrasting experiences of the judicial process during the seventeenth century and those of the eighteenth and early nineteenth centuries are largely due to an increase in the number of statutory offences created between 1680 and 1820 under the 'Bloody Code', combined with the effects of the Transportation Act, 1718, which made transportation to America for seven years or more (rather than branding) the statutory punishment for those who successfully pleaded benefit of clergy and a range of common law felonies between 1718 and 1775.

Inconsistencies identified by Palk, in the exercise of gendered discretion in the decision-making process, were also evident in the court records for Yorkshire during the eighteenth century. A recurring theme of this thesis is of greater leniency extended to women under threat of a capital sentence, alongside the more severe punishment of women when that threat was removed. The core argument of this thesis also relates to the core arguments of Lucia Zedner and Carolyn Conely for the Victorian period, when they too observed the gendered nature of judicial responses to crime.

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I have been fortunate to meet a number of eminent historians who have been generous in giving their time to discuss the ideas canvassed in this thesis and in sharing their knowledge of little known primary and secondary resources. I hope I have missed no one out when I thank Barry Godfrey, Douglas Hay, Peter King, Wilfred Prest and John Styles. During the course of the PhD process I have attended a number of conferences and offer my thanks to those I met along the way for their ideas and support for the aims of this thesis, in particular, Daniel Grey and Liz Hore of TNA.

My thanks also go to the staff and magistrates at Kingston Magistrates court where I enjoyed eight-years as a member of the Bench. The closure of the court in 2011 was a sad loss to me but a greater loss to social justice, the court having delivered local justice to local people from its foundation in 1481.

The greatest thanks go to my husband, Robert Markless, who supports me and our daughters in everything we do. I had better thank my mother and father, I am sure they had a hand in things somewhere.

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Abbreviations

TNA The National Archives (formerly the Public Record Office, PRO)

ERY East Riding of Yorkshire

NRY North Riding of Yorkshire

WRY West Riding of Yorkshire

Glossary of legal terms as used in this thesis.

Benefit of clergy:	An exemption from a capital sentence imposed following a conviction for certain offences. Originally the 'benefit' was reserved for members of the clergy but over time it was extended to men and women.
Certiorari:	A writ or order used to remove a civil case or criminal indictment to the King's Bench, allowing the higher court to try a case or order a re-trial if there had been some abuse or error in a lower court.
Compounding:	Coming to a private agreement to refrain from prosecuting a felony in exchange for money or other consideration.
Coverture:	The control exercised by a husband over his wife, giving rise to various legal rights and obligations.
Estreat:	A record relating to the enforcement of a fine or forfeiture of a recognizance.
Felony:	Any serious crime punishable by death or the forfeiture of lands and goods.
Femme covert:	The legal status of married women.
Grand larceny:	Theft of goods to a value in excess of one shilling.
Indictment:	The document outlining the offence/s for which a defendant was to stand trial, where the originating bill of complaint had been returned as 'a true bill' by a grand jury.
Misdemeanour:	A minor offence which is less serious than a felony.
Partial verdict:	The verdict of a petty jury finding a defendant guilty of a lesser offence.
Petit larceny:	Theft of money or goods valued at twelve pence or below.

Pious perjury:	A device employed by ‘pious’ juries to avoid convicting a defendant of a capital felony by convicting of a reduced charge.
Posse comitatus:	A body of people called upon by a justice of the peace to assist in preserving the peace.
Recognizance:	An order to appear in court often accompanied by a financial bond and third party sureties.
Sole femme:	The legal status of single and widowed women.
Traverse:	A challenge to some element in a bill of complaint alleging a misdemeanour.

Introduction

History begins where justice ends. Long after the judge finishes a case and sends it off to gather dust in the archives, a historian reclaims it for his or her own purposes.[1]

The question

It is generally accepted that men committed more crimes than women and this fact has led an increasing number of historians to examine the disparity between male and female offending. Many historians challenge assumptions about female offenders: that they were not as brave as men, they were less criminally inclined than men, they were less dangerous than men, and, in consequence, received more lenient treatment before the courts than men.[2] However, even surveys of the same records may result in nuances of interpretation that underline the difficulties in construing the evidence of discretionary decision-making. Gregory Durston deduced from his survey of the Old Bailey session papers that: "During the eighteenth century, Metropolitan women were normally favoured as defendants at trial, and as convicts when it came to punishment".[3] While Peter King concluded from his review of Essex quarter session and Old Bailey Sessions Papers (1740-1820) that gendered attitudes of the eighteenth-century judiciary were deep rooted and "steeped in a tradition of patriarchal assumptions".[4] In contrast, Deirdre Palk observed from her study of the Old Bailey session papers (1780-1830) that, although gender was not one of the influences openly acknowledged as affecting judicial decisions, the evidence is that "gender was a

[1] Muir, E. and G. Ruggiero (editors) (1994) History from Crime, Baltimore and London: The John Hopkins University Press, p. vii.
[2] Walker, Garthine (1994) 'Women, theft and the world of stolen goods' in Kermode and Walker (editors) Women, Crime and the Courts, pp. 81-105, p. 82; Walker, Garthine (2003) Crime, Gender and Social Order in Early Modern England, Cambridge: Cambridge University Press, p. 159; Weiner, C.Z. (1974-1975) 'Sex roles and crime in late Elizabethan Hertfordshire', Journal of Social History, vol. 8, pp. 38-60; Zedner, Lucia (1991) Women, Crime and Custody in Victorian England, Oxford: Clarendon Press, p. 29.
[3] Durston, Gregory (2007) Victims and Viragos: Metropolitan Women, Crime and the Eighteenth-Century Justice System, Bury St. Edmunds: Arima, p. 53.
[4] King, Peter (March 1984) 'Decision-Makers and Decision-Making in the English Criminal Law, 1750-1800', The Historical Journal, vol. 27 (1), pp. 25-58, p. 56; King, Peter (2000) Crime, Justice and Discretion in England 1740-1820, Oxford: Oxford University Press, p. 278-288.

strong force at work … but it pulled in different ways at different points of the system."[5] Shani D'Cruze and Louise Jackson similarly concluded that the experience of women before the law was uneven and that outcomes for female offenders were dependant on a complex interaction between personal circumstances and prevailing priorities of the criminal justice system.[6] In particular, D'Cruze and Jackson draw attention to studies of urban and metropolitan courts, which they describe as 'atypical' of patterns of behaviour observed in rural courts.[7] This thesis draws on the work of legal and social historians, placing the experience of the individual within the rules of the law and legal procedures operative during the period 1735-1775. The principal question addressed in this thesis is: were female offenders in Yorkshire treated more leniently than men at any stage of the judicial process when they committed similar crimes?

John Brewer and John Styles observed that the English legal system was "from prosecution to punishment … shot through with discretion" and the exercise of some form of leniency was possible at any point following the commission of a crime.[8] Therefore, if women were perceived as weak, irrational and generally prey to their emotions, one might expect to find evidence of women as the main beneficiaries of gendered leniency, their nature making them more susceptible to being led astray. This thesis encompasses the predicament of both sexes within the judicial system so that their experiences can be understood in relational terms.[9] Evidence of gendered differences in the treatment of men and women is examined at all stages of the legal process: in the decisions whether or not to prosecute; the bills of complaint in which victims were careful to differentiate between

[5] Palk, Deidre (2006) Gender, Crime and Judicial Discretion, 1780-1830, Suffolk: The Boydell Press, p. 155.
[6] D'Cruze, Shani, Louise A. Jackson (2009) Women, Crime and Justice in England since 1660, Basingstoke: Palgrave Macmillan, p. 49.
[7] D'Cruze and Jackson, Women, Crime and Justice in England, p. 18.
[8] Brewer, J. and J. Styles (editors) (1980) An ungovernable people: the English and their law in the seventeenth and eighteenth centuries, London: Hutchinson, p. 18.
[9] Tosh, John (2010, fifth edition) The Pursuit of History, Harlow, London, New York: Longman, p. 279; Arnot, Margaret L. and Cornelie Usborne (1999) 'Why gender and crime? Aspects of an international debate', Margaret L. Arnot, and Cornelie Usborne (editors) Gender & Crime in Modern Europe, London: UCL Press, pp.1-43, where Arnot and Usborne called for a comprehensive, gendered history of crime.

allegations of felonies and misdemeanours;[10] the verdicts of grand juries as to the 'truth' of a bill; the decisions of 'pious' juries in passing partial verdicts or acquitting defendants;[11] the sentencing practices of justices of the peace and assize judges; and finally in the exercise of mercy following a capital conviction.

Literary review

The evidence from other surveys of court records is that female presence in criminal records declined between the seventeenth and twentieth centuries, although there are differing opinions as to whether or not that decline followed an even trend across time. Keith Wrightson's study of sixteenth and seventeenth century Essex and Lancashire led him to conclude that by the seventeenth century the reduction in physical conflicts in those communities allowed the courts to concentrate on "defending the property of the propertied".[12] Wrightson acknowledged, however, that changes in the prosecution of men and women may have occurred more slowly in the other parts of the country and that the pattern of change may have altered as regulatory control by the local parish diminished as the process of urbanization continued over the course of the eighteenth century.[13] Malcolm Feeley and Deborah Little sensed a general decline in female prosecutions between the eighteenth and twentieth centuries that reflected the changing role of women in society and a growth in private forms of social control that "diverted women from the criminal process".[14]

King observed fluctuations in the ratio of male and female offending during times of war and peace, in which the proportion of female offenders was higher during times of

[10] See the glossary of terms at pp. viii-ix for meaning of legal terms used in this thesis.
[11] See glossary.
[12] Wrightson, Keith (1980) 'Two concepts of order: Justices, constables and jurymen in seventeenth-century England', in Brewer and Styles (editors) An ungovernable people, pp. 21-46, p. 45.
[13] Wrightson, 'Two concepts of order', p. 45.
[14] Feeley, Malcolm M., Deborah L. Little (1991) 'The Vanishing Female: The Decline of Women in the Criminal Process, 1687-1912', Law & Society Review, vol. 25 (4), pp. 719-758, p. 750.

war, although, at the same time, there was an overall reduction in crime when civilian men were drafted into the army or navy in greater numbers than usual.[15] The demands by the army and navy for rations left a weakened economy at home, in which women had a greater need to fend for themselves when male providers were absent and which would have been aggravated in urban environments where women were less involved in subsistence farming. Nonetheless, those sections of the economy involved in the supply of provisions (at home or abroad) benefited from increased demands on their trade.[16] King questioned Feeley and Little's theory of the 'vanishing female' and suggested that evidence of any long-term decline in female involvement in indictable crimes does not become apparent until the second half of the nineteenth century.[17] The evidence surveyed for this thesis supports King's findings that, although women account for a smaller proportion of offenders than men, there is evidence of "extensive continuity" in the ratio of male to female offenders across the periods surveyed,[18] although the gap between the percentage of men and women who committed acts of violence was wider than between those who committed theft. However, the evidence examined in this thesis does not tend to support Durston's conclusion, that evidence of gendered leniency towards female defendants "largely disappeared" when a woman was convicted of a fatal assault.[19] Rather, the evidence from Yorkshire is that the primary instance when leniency towards a female capital convict was withheld arose where the options for mercy were limited under the law relating to petit treason.[20]

[15] King, Peter (2006, first edition) Crime and Law in England, 1750-1840: Remaking Justice from the Margins, Cambridge: Cambridge University Press, pp. 204-205. Also, Maxwell-Stewart, Hamish, University of Tasmania (26 June 2011) 'Crime and Punishment in Convict Van Diemen's Land': symposium on 'Histories of Crime in the Digital Age', Institute of Historical Research, unpublished, when Maxwell-Stewart observed that fewer convicts were transported to America when England was at war than during times of peace.
[16] See pp. 288-289.
[17] King, Crime and Law in England, 1750-1840, p. 220.
[18] King, Crime and Law in England, 1750-1840, p. 220.
[19] Durston, Victims and Viragos, p. 79.
[20] See pp. 158-159.

Assessing the different experiences of men and women within the judicial process is not straightforward. Gendered studies of early modern Europe by Merry Wiesner and Nicole Castan indicate that women who stole during times of shortage to feed their families, or under the authority of their fathers or husbands, were more likely to be given lighter sentences than men.[21] In contrast, Garthine Walker noted that attitudes to particular crimes varied over time and found little evidence in seventeenth-century Cheshire to support the "widely held assumption" that women were treated differently from men.[22] There was no evidence that women were treated more leniently in cases of larceny and Walker concluded that low conviction rates for pick-pockets of either sex more likely reflected the ineptitude of the prosecutors, rather than any gendered-influences at work.

During the early modern period, through to at least the first half of the eighteenth century, shame punishments such as whipping and the pillory played a significant role in the public punishment of men and women convicted of a range of petty offences, thefts and fraud; and those which challenged social and moral order by way of sedition and blasphemy.[23] David Nash, Anne-Marie Kilday and D'Cruze and Jackson observed that the traditional uses and functions of shame and punishment were questioned during the eighteenth century, so that the wide acceptance and utility of shame diminished in its effectiveness as penal options were preferred.[24] This thesis compares evidence of the continued application of public punishments in Yorkshire with surveys for other counties.[25] Shoemaker noted that a decline in issues concerning public insult between 1600 and 1800

[21] Wiesner, Merry E. (1993) Women and Gender in Early Modern Europe, Cambridge: Cambridge University Press, p.102; Castan, Nicole (1993) 'Criminals' in N.Z. Davis, and A. Farge (editors) A History of Women: Renaissance and Enlightement Paradoxes, Cambridge, Massachusetts and London: Belknap Press of Harvard University Press, pp. 475-488, p. 484.
[22] Walker, Crime, Gender and Social Order, p. 208.
[23] Nash, David S., Anne-Marie Kilday, (2010) Cultures of shame: exploring crime and morality in Britain 1600-1900, Basingstoke: Palgrave Macmillan, eBook, p. 75.
[24] Nash, David S., Anne-Marie Kilday, (2010) Cultures of shame: exploring crime and morality in Britain 1600-1900, Basingstoke: Palgrave Macmillan, eBook, pp. 85, 101; ; D'Cruze and Jackson, Women, Crime and Justice in England, p. 123.
[25] See p. 108.

was mirrored by a parallel decline in "community-based shame punishments" in London.[26] Nevertheless, a continued belief in the effectiveness of shaming in the more closely-knit communities of Yorkshire may explain why orders for public and private whipping persisted as an active element of sentencing by local justices for Yorkshire during the periods surveyed.

Contrasts in the experiences of men and women within the judicial process during the period observed by Walker, compared to the period covered by this thesis and in various studies by King, are largely due to an increase in the number of statutory offences created between 1680 and 1820, when the number of capital offences increased from about fifty to two hundred under the 'Bloody Code'[27], while the Transportation Act of 1718 made transportation to America for seven years or more (rather than branding) the statutory punishment for those who successfully pleaded benefit of clergy following a first conviction for a range of common law felonies.[28] Capital sentences had long since applied to a range of offences, from the theft of an item valued in excess of 1s. to murder, although, inflation from the late sixteenth century onwards severely diminished the value of the shilling; thus elevating many minor crimes to the level of a capital offence. While rising levels of population and urbanisation meant that the numbers of crimes committed increased during the eighteenth century, in reality, per capita crime levels had been falling from the beginning of the century.[29] Nevertheless, responses to reports of parliamentary committees during the second half of the eighteenth century made it clear that the House of

[26] Shoemaker, Robert (2000) 'The decline of Public Insult in London: 1600-1800', Past and Present, vol. 169, pp. 97-131.
[27] See Rawlings, Philip (1999) Crime and power: a history of criminal justice: 1688-1998, Harlow: Longman, pp. 40-43; and Emsley, Clive (2010, fourth edition, first published 1987) Crime and Society in England, 1750-1900, London: Pearson Longman, pp. 10-11, in which Rawlings and Emsley examine some of the problems in estimating the exact number of capital offences and in defining the period to which the term 'the Bloody Code' applies.
[28] 4 Geo. I, c.11 (1718)), An Act for the further Preventing Robbery, Burglary and other Felonies and for the more effectual Transportation of Felons. For 'benefit of clergy' see p. 77 and glossary; 7 & 8, c.28, Geo. IV (1827) Criminal Law Act, abolished the benefit of clergy.
[29] Rowbotham, Judith (2010) 'Execution as Punishment in England', Kilday, Anne-Marie, David S. Nash (2010) Histories of Crime: Britain 1600-2000, Basingstoke: Palgrave Macmillan, pp. 180-202, p. 182.

Lords were opposed to any relaxation of the criminal law, an increase in the value threshold for grand larceny in excess of 1s. or a repeal of the death penalty.[30] At a time of growing debates on individual rights and the protection of property, one prevailing view was that the severity of punishment had to be increased in proportion to the difficulty in preventing a particular crime, compounded by the mischief of that crime.[31]

In such circumstances, the government were unlikely to avoid serious public riots unless restraint was exercised by the judiciary to mitigate the excesses of the 'Bloody Code'. Radzinowicz argued that the exercise of the prerogative of mercy was a form of philanthropy, which "helped to redress the balance between the antiquated criminal law and the modern notions of guilt and punishment".[32] While the exercise of mercy was a conventional practice with a long history, Douglas Hay further suggested that the use of pardons allowed the judiciary and the Crown to respond to capital statutes drafted in haste and fear of "the spectre of county towns festooned with corpses".[33] While new laws were deemed necessary to capture and condemn the 'real' criminals, the judicial process provided a system of rules, procedures and precedents which provided a counterbalance to the excesses of the 'Bloody Code' by allowing assize judges to recommend convicts to the king's mercy,[34] in what Hay described as "a selective instrument of class justice".[35] The pardon system enabled the courts to make an example of one offender in order to

[30] Radzinowicz, L. (1987, first published 1948) A History of English Criminal Law and its Administration from 1750: The Movement for Reform, vol. 1, London: Stevens & Sons Ltd, pp. 402-403;Beattie, J.M. (2002, first published 1986) Crime and the Courts in England 1660-1800, Oxford: Oxford University Press, p. 559.
[31] Paley, William (1785, first edition) The Principles of Moral and Political Philosophy, vol. 2, London, p. 529.
[32] Radzinowicz, History of English Criminal Law, vol. 1, p. 137
[33] Hay, D. (1975) 'Property, Authority and the Criminal Law', in Hay, D., P. Linebaugh, and E.P. Thompson, (editors) Albion's Fatal Tree, London: Allen Lane, pp.17-64, p. 57. William Blackstone identified the king's prerogative to extend mercy as an ancient right at common law, which received statutory recognition under Henry VIII: 25 Hen. VIII, c.19 (1533-1534) an Act for the submission of the Clergy to the King; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of the Rights of Persons, vol. 1, Oxford: Clarendon Press, p. 269.
[34] Beattie, Crime and the Courts, pp. 436, 586.
[35] Hay, 'Property, Authority and the Criminal Law', p. 48.

reconfirm a particular law, without attracting too much local hostility by the frequent executions of other offenders. How that strategy was applied to different crimes and particular offenders is considered in relation to the specific crimes examined in chapters 4-7 of this thesis.

It has been observed that the criminal justice system served to filter out many women accused of potentially capital offences, while the system of pardons and benefit of clergy served to save both men and women from the harshness of the 'Bloody Code'.[36] King's examination of Old Bailey Sessions Papers led him to conclude that the severity of the 'Bloody Code' put pressure on eighteenth-century judges to find mitigating circumstances through, *inter alia*, a defendant's age, gender or reputation.[37] He observed that gendered attitudes were entrenched in the judiciary and that patriarchal assumptions resulted in contradictory and inconsistent sentencing policies, in which a woman might receive a more lenient sentence than a man who had committed a similar offence.[38] Vic Gatrell also picked up on a new sense at the turn of the eighteenth and nineteenth centuries that women were to be pitied not punished, but recognised that the relationship between responses to female criminality, changing social values and gender roles make that proposition difficult to evaluate.[39] Palk equally identified the effect of paternalism and judicial chivalry generally working to the benefit of women, although, that decision-making process was not necessarily consistent, leaving a "system of justice suffused not just with discretion but with gendered discretion".[40] This thesis argues that similar inconsistencies are evident in the court records for Yorkshire during the eighteenth century where a recurring theme appears to be the greater leniency extended to women under threat of a capital sentence,

[36] D'Cruze and Jackson, Women, Crime and Justice in England, p. 124.
[37] King, 'Decision-Makers', p. 56; King, Crime, Justice and Discretion, p. 278-288.
[38] King, Crime, Justice and Discretion, p. 285.
[39] Gatrell, V.A.C. (1996) The Hanging Tree: Execution and the English People 1770-1868, Oxford: Oxford University Press, pp. 334-347.
[40] Palk, Gender, Crime and Judicial Discretion, p. 176.

alongside the consistently more severe punishment of women when that threat was removed.[41]

In a study of women as the victims of crime in Victorian Kent, Carolyn Conely found that "even when men and women committed or experienced the same crimes, judicial responses were not always the same".[42] Lucia Zedner's similarly observed that changing views in Victorian England about criminal women relate directly to prevailing notions of femininity.[43] Victorian society was prescriptive and women who broke the law also contravened moral codes on female behaviour which were deemed essential to the maintenance of moral order. Women who could be seen as 'sick' or 'mad' came to be seen as requiring specialized treatment outside the penal sphere, while those who were 'bad' could expect a judicial punishment.[44]

Even before then, it is possible that judges and juries paid attention to mental states when seeking extenuating circumstances which might mitigate the harshness of the 'Bloody Code'. Dana Rabin's study of depositions from criminal trials on the Northern Circuit[45] and trial transcripts from the Old Bailey Session Papers led her to observe the development of new vocabulary used to describe mental states during the eighteenth century as different manifestations of insanity were attributed as male or female characteristics, which in turn affected gendered interpretations of criminal responsibility.[46]

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[41] See p. 277,where woman who received the benefit of a partial verdict for a burglary were more likely to receive an order for transportation, compared to their male counterparts.
[42] Conley, Carolyn A. (1991) The unwritten Law: Criminal Justice in Victorian Kent, Oxford: Oxford University Press, p. 68.
[43] Zedner, Crime and Custody, p. 297. See also, Arnot, M.L. (1994) 'Infant death, child care and the state: the baby farming scandal and the first Infant Life Protection Legislation of 1872', Continuity and Change (9), pp. 271-311, p. 273, in which Meg Arnot considers the attempt by some men during the nineteenth century to stress the gender differences and construct a separate domestic sphere for women.
[44] Zedner, Crime and Custody, p. 297.
[45] The Northern Circuit consists of the assize courts of the City and County of York, Northumberland, Cumberland and Westmorland.
[46] Rabin, D.Y. (2004) Identity, Crime and Legal Responsibility in Eighteenth-century England, Basingstoke: Palgrave Macmillan, pp. 4, 112.

However, until at least the last quarter of the eighteenth century, a defence based on temporary insanity was unlikely to have been available to the single women accused of infanticide,[47] although (as examined in chapter 4), jurors found other means by which to absolve the vast majority of women from culpability following the death of a new-born child.

When opportunities for the extension of mercy had been withheld during the trial and pre-trial processes, Hay detected expressions of paternalism towards poor men and women capitally sentenced through the exercise of the royal prerogative of mercy.[48] Although gender was not generally cited as one of the considerations in the judicial decision-making process, Hay acknowledged that it was conceivable that some of the grounds given for the recommendation of mercy carried with them notions of gender. In contrast, the evidence of studies undertaken by Walker and Palk is that, women who were considered to be a threat to social and economic norms were unlikely to be the beneficiaries of paternalistic protection. Through an examination of judicial process in quarter session and assize records, this thesis examines the changing attitudes to those who participated in crime during the mid-eighteenth century. It bridges the gap the between Walker's rebuttal of the notion that women were routinely treated more leniently than men during the seventeenth century and Palk's observations of patriarchal leniency from the late eighteenth to mid-nineteenth centuries and extends the coverage provided by King.[49]

[47] Rabin, Identity, Crime and Legal Responsibility, pp. 97, 103.
[48] Hay, 'Property, Authority and the Criminal Law', p. 47.
[49] The work of King and Palk also point to the need for more detailed studies for the nineteenth century post 1840.

Sources used

This thesis relies on a survey of two periods of eleven years each, 1735-1745 and 1765-1775. In legal terms this corresponds with the period between 1718 and 1775 when capital offenders might be respited for transportation to the American colonies.[50] It is also the case that a substantial body of written examinations of the accused and deposition statements taken from witnesses in Yorkshire assize cases during this period survive in TNA series ASSI 45.[51] However, for the reason that some legal records pre-1733 were written in Latin, the primary sources reviewed for this thesis generally post-date that period, although reference to primary sources before 1735 have been made in order to examine the development of the legal processes throughout the period of transportation to America.

Politically, the two sample periods share similar experiences, in commencing with a period of peace, followed by a period of dearth, and each ending with the country being involved in a war or hostilities overseas. The thesis begins with a period of relative peace and stability until the War of Austrian Succession (1740-1748), the food shortages of 1740/1741 and the Jacobite Rebellion of 1745. During the later period surveyed, England experienced a further period of food scarcity during 1766-1767, although disturbances arising from food shortages in the later period were more extensive in the western and southern counties of England.[52] By 1770 English forces were concerned in managing unrest in the American Colonies, as a response to the retention of the tea duty by the government in England, which culminated in the American war of Independence (1775-1783).

[50] 4 Geo. I, c.11 (1718). While the Act remained in force, America ceased to be a viable destination for criminals ordered for transportation following the American war of Independence in 1775.
[51] Notes to TNA ASSI 45 are described on the TNA website as 'Northern Circuit, criminal depositions and indictments', however, they contain no indictments for the periods surveyed in this thesis and the records might more properly be described as 'criminal depositions and recognizances'.
[52] Thompson, E.P. (1971) 'The Moral Economy of the English Crowd in the Eighteenth Century', Past and Present, vol. 50, pp. 76-136, pp. 110, 112.

The significance of the periods of dearth in Yorkshire can be illustrated by the different responses to grain shortages, which culminated in the food riots of 1740, as examined in chapter 7, compared to the absence of any notable outbreaks of unrest in the county arising from the grain shortages of 1766-1767. As considered earlier, higher wages in the later period allowed many industrial labourers in West Yorkshire to better manage rising food prices, while the harvest in the county was generally better than in other regions.[53] Issues of war and strife had a direct impact on the county and played a greater role during the first period sampled in the Yorkshire records (1735-1745) than the later period (1765-1775). The main significance in respect of crime and punishment was that orders for enlistment into the army or navy, as an alternative punishment following a criminal conviction in the county, were greatest during the period 1740-1745, coinciding with the War of Austrian Succession. In contrast, few similar orders were made during the second period sampled, when England was not yet engaged in a major conflict.[54]

The survey of two eleven year periods which span a greater period of forty years allows for a representative sample of criminal records to be taken for each period and the examination of gendered behaviour during times of strife and peace and the responses of those in authority. However, it is accepted that the inclusion of two time periods makes for an added variable to change over time. A micro-study of one county is not necessarily a model for what went on in other circuits or within the Northern Circuit itself, as is apparent when comparing records for the more widely surveyed counties in the south of England.. That raises other issues of typicality and generalisation which are considered within the thesis and allows for distinctions to be observed between judicial practices in metropolitan and provincial courts when, for example, sentencing practices in Yorkshire in respect of

[53] Rule, John (1986) The Labouring Classes in Early Industrial England 1750-1850, Harlow, Essex,: Pearson Education, p. 349; see p. 27.
[54] See p. 117.

whipping may have occurred later than observed in London and its metropolitan suburbs.[55] This thesis dispels any general notion of 'arcadian justice' in the county, despite its distance from the capital city, rather it provides evidence of a committed judiciary and an active awareness of established and evolving laws and legal procedures by justices, lawyers and laymen.[56]

Until 1805 no official statistics of indictable crimes were collected centrally[57] and evidence of the work of the assizes has been collated from surviving Crown and Civil Minute Books and Gaol Books for the Northern Circuit, more particularly Yorkshire. Preliminary evidence of a crime was gathered by local magistrates in the form of written examinations of the accused and deposition statements taken from witnesses. Each deposition was made in writing, signed by the witness and the justice of the peace (or magistrate) before whom it was sworn and, usually, taken in the presence of a legal clerk. The documents produced were not records of spontaneous words of a witness rather they were a construct of the clerk who wove the questions posed by the magistrate together with the answers elicited from each witness. Deciding what to say to a magistrate was just one step in the discretionary process and could affect the whole course of the following proceedings, depending on whether the events described constituted a crime or if the information provided a link to a suspected criminal.[58] Witnesses edited their description of events to avoid implicating themselves as possible accomplices, particularly when the

[55] Macfarlane, Alan (1983) A Guide to English Historical Records, Cambridge: Cambridge University Press, p. 21; D'Cruze and Jackson, Women, Crime and Justice in England, p. 18; see p. 108.
[56] Landau, Norma (1984) The Justices of the Peace, 1679-1760, California, London: University of California Press, pp. 173-174.
[57] Smith, Professor Adrian (November 2006) Crime Statistics: An independent review carried out for the Secretary of State for the Home Department, p. 1: http://webarchive.nationalarchives.gov.uk/20110220105210/rds.homeoffice.gov.uk/rds/pdfs06/crime-statistics-independent-review-06.pdf, accessed 30 July 2012.
[58] Howard, Sharon (2004) 'Investigating responses to theft in early modern Wales: communities, thieves and the courts', in Continuity and Change, vol. 19 (3), pp. 409-430, at p. 410; and see Gowing, Laura (1998, first edition 1996) Domestic Dangers: Women, Words, and Sex in Early Modern London, Oxford: Oxford University Press, p. 235.

penalty for receiving stolen goods was transportation for fourteen years.[59] Depositions are not, therefore, wholly transparent and their neutrality is questionable when their final content was a reshaping of the evidence reproduced by the legal clerk. Nevertheless, depositions are a useful source for discovering the details of the crimes alleged, they provide evidence of the detection of the crime, the circumstances of the detention of the suspect and any pre-trial confession by an accused.

TNA ASSI 44 includes copies of indictments (charges) presented to the Northern Circuit, together with lists of justices of the peace and jurors, recognizances (sureties), gaol calendars (records), and coroners' inquisitions.[60] While the chronological run of the series is substantially complete for the periods surveyed, some of the documents are in poor physical condition and others have become detached from the correct bundles. The indictments that have survived tend to be those found as 'true bills', although, the paucity of those marked 'not found' is not unexpected as the clerks of the courts were meant to 'rent into pieces' or permanently deface all bills that were dismissed.[61] The bills contain a brief description of the offence committed and many of the 'true bills' are usually annotated with the trial verdict and, on occasion, the sentence passed. The indictments provide additional information which is often missing from the minute books and a comparison of indictments and minute books highlights inconsistencies in the record keeping process, where a few indictments found in TNA ASSI 44 are not mentioned in the minute books and some cases recorded in the minute books cannot be matched to an extant indictment.

[59] 4 Geo. I, c.11 (1718).
[60] See glossary.
[61] Herrup, Cynthia B. (1987, first edition) The Common Peace: Participation and the Criminal Law in Seventeenth-Century England, Cambridge: Cambridge University Press, p. 114.

The clerk of assizes was expected to produce four calendars of the delivery of the gaol: one copy was signed by the clerk of assize and delivered to the judge; a second copy was signed by the judge and delivered to the clerk of assize; the third copy was signed by the clerk of assize and delivered to the sheriff; and the fourth went to the gaoler.[62] The clerk's copy signed by the judge can now be found in TNA ASSI 42. Crown minute books are held in TNA ASSI 41 and these books record the name of the accused, the substance of the charge, the plea, the verdict and sentence and the names of the grand and petty jurors. Some books in these series also include minutes of recognizances taken in court.

Where both the minute book and gaol book survive for the same sessions it is not unusual to find that the records are not identical and that the names of some defendants are omitted from one or other of the books. The fact that the two books were created for different purposes may explain some of the discrepancies. Therefore, a survey has been made of both sources found to be extant in the TNA ASSI series in order to create a comprehensive database of assize records for the periods surveyed.

The legal clerk was required to maintain a 'process' book of all defendants who failed to appear and enter their plea at the assizes, which was delivered to the sheriff so that he could 'execute' warrants against them.[63] The clerk was also expected to make an entry of all traverses (challenges) entered, in anticipation of a defence being entered at a later date,[64] although, neither the process books nor records of traverses have been located for use in this thesis. Details of fines imposed and recognisances forfeited which were collected by local sheriffs can be found in the *estreat* rolls in TNA E series.[65] Although it

[62] Stubbs, W., and G. Talmash (1749, second edition) The Crown Circuit Companion, J. Worrall: London, p. 19.
[63] Stubbs and Talmash, The Crown Circuit, p. 21.
[64] See glossary.
[65] See glossary.

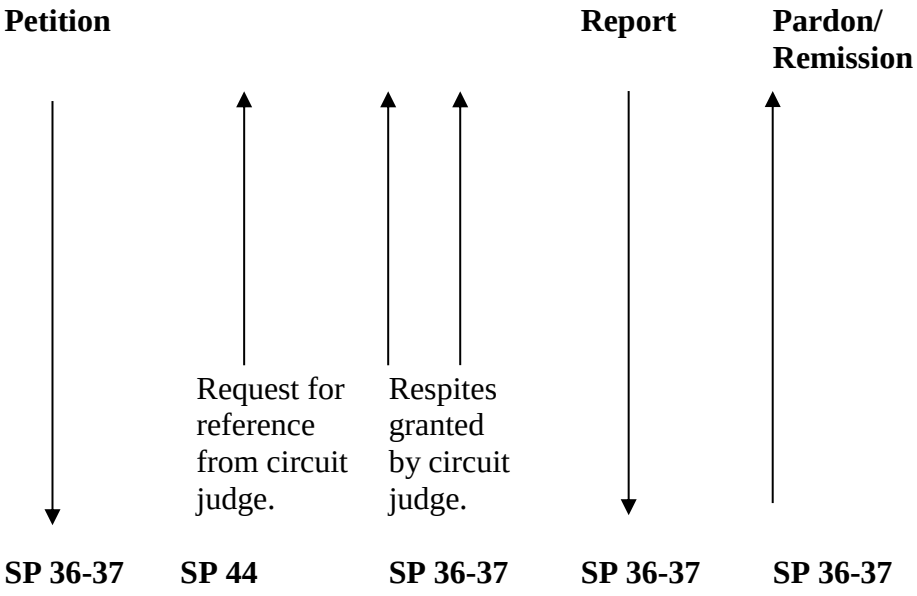
has not been possible to undertake a complete review of this series, sample years have been examined in order to give a fuller picture of the judicial process.

Transcripts of circuit memorials produced on behalf of the circuit judges, listing the names of capital convicts and any recommendations for the king's mercy, are found in TNA SP 36 and 37. These books contain, *inter alia*, incoming correspondence to the Secretary of State's office relating to the judicial administration of each county. Outgoing responses are found in TNA SP 44 and both sets of state papers have been fully reviewed for each of the ten year periods selected for this thesis.[66] TNA SP 36/1 -72 (June 1727 to October 1745) are catalogued on the TNA on-line catalogue, while TNA SP 44 has been catalogued in part in a four volume series covering the reign of George III between 1760 and 1775.[67] Both these sources have been used to cross-check against the records extracted from the original sources. Diagram A.1 below illustrates the movement of correspondence in and out of the office of the Secretary of State that would follow a recommendation or petition for mercy from a capital conviction.

[66] The State Papers reviewed for this study predates the creation of a distinct Home Office and Foreign Office and their contents are not separated by subject matter, although they tend to follow a chronological order. A review of the records is further complicated as one subseries contains transcripts of 'letters out' and another copies of 'letters in'.

[67] PRO, Calendar of Home Office papers of the reign of George III: 1760-1775; preserved in Her Majesty's Public Record Office 4 volumes (published 1878-1899), Public Record Office, Longman & Co. and Tribner & Co.

Diagram A.1: Appeal process and the secretary of state



The records of the business of the assizes are scattered across a range of collections and not all collections are complete, although sufficient records have survived in order to create an extensive database of criminal cases and allow meaningful analysis of the assize process. Data of assize hearings has been supplemented by material found in contemporary newspapers and broadsides. Few cases heard outside London were reported in printed form but some printed articles have survived in the British Library, Eighteenth Century Collections Online (ECCO) and in the microfiche series British Trials, 1660-1900, Chadwyck–Healey (publishers). A review of those collections has provided qualitative evidence of the judicial process and specific evidence of gendered attitudes expressed in contemporary commentaries.

Bills of complaint presented at quarter sessions and assizes were subject to review by the King's Bench on the application of a defendant to remove a bill from the lower court to King's Bench by a writ of *certiorari.*[68] Difficulties arise in identifying cases determined

[68] See glossary.

before the King's Bench because procedural rules required that writs to remove causes to the higher court had to be served before the jury appeared in the inferior court; thus the minute books of the quarter and assize sessions in Yorkshire are generally silent on such matters.[69] The practice in the provinces was that particular cases were put over from quarter or assize sessions to be determined by a circuit judge, sitting as a judge of the King's Bench and commissioners of the peace.[70] Records of their proceeding were collected locally and returned to the central offices of the King's Bench in London (TNA KB series). It does not appear that this was done on a methodical basis and records of a matter determined locally in one year might not appear in the records of King's Bench until some years later. Until the 1750s the TNA KB series also include copies of coroners' inquisitions which had been handed in to the assize justices. Coroner's reports after that date are scattered amongst various archives.[71] Cases surveyed for this thesis are overwhelmingly those which the court deemed to be within the jurisdiction of either of the two lower courts and matters referred to the King's Bench are generally outside the remit of this thesis.

Quarter session records for the East, West and North Ridings of Yorkshire are held across the three county record offices at Beverley, Wakefield and Northallerton and in the local record offices at Leeds, Doncaster, Hull and the City of York. The majority of quarter session records for the East Riding of Yorkshire (ERY) are held in the record office in Beverley in series QSF (Quarter Sessions files), with additional information in series QST (including vouchers for transportation), and series QSV (order books, recognizances and

[69] 43 Eliz. c.5 (1601) An Act to prevent unnecessary expenses in suits of Law; Hay, Douglas (2004, first published 2002) 'Dread of the Crown Office: the English magistracy and King's Bench, 1740-1800', in Norma Landau, ed., Law, Crime and English Society 1660-1830, Cambridge: Cambridge University Press, pp. 19-45, pp. 19-20.
[70] For the criminal jurisdiction of King's Bench see, Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Public Wrongs, vol. 4, Oxford: Clarendon Press, pp. 314-315; Baker, J.H. (2007, fourth edition, first published 1971) An Introduction to English Legal History, Oxford: Oxford University Press, pp. 503-505; Hay, 'Dread of the Crown Office', pp. 19-45.
[71] See, Gibson, Jeremy and Colin Rogers (1997, third Edition) Coroners' records in England and Wales, Birmingham: Federation of Family History Societies.

appeal books) which include a note of verdict and sentence. Data collected for the East Riding combines samples taken from the paper records held in Beverley and a review of their online catalogue.[72] Records for the city of Hull are held at the Hull City Archives on microfilm in series C CQA and a review of those records has been undertaken.

Records of the quarter sessions for the North Riding of Yorkshire (NRY) are held at the record office in Northallerton, with additional material for the city of York held at City of York Archives. Records at both locations are found in series QSM (minute and order books) and QSB (quarter sessions bundles) and both series have been reviewed, alongside additional material found in a CD ROM produced by the North Riding Record Office, containing transcripts of eight volumes of quarter session records for the seventeenth and eighteenth centuries. Quarter session records for the West Riding of Yorkshire (WRY), held in Wakefield under the series QS1 and QS4, cover the sessions held at Skipton, Bradford, Rotherham, Knaresborough, Leeds, Sheffield and Wakefield. The records held in QS1 contain, *inter alia*, indictments and recognizances with some informations, examinations, depositions, lists of jurors and calendars of prisoners. Series QS4 contains detailed transcripts of the indictments presented at quarter sessions. A preamble to each session notes the date and place of the session, the justices attending and the names of the grand jurors. The transcript of each indictment is annotated with a record of the verdict, sentence and names of witnesses. Notes of each session end with a list of the bills of indictment which the grand jury returned as *ignoramus* (bills not found) and of recognizances taken at that session. Records for the city of Leeds were created using the same format and are held at the Leeds Archive in series QL/1. Other miscellaneous records reviewed for the West Riding include QD1/521 found in Wakefield, which contains a list

[72] East Riding Archives and Local Studies Online Catalogue, http://www.eastriding.gov.uk/CalmView/. Converting paper records to the East Riding catalogue is an on-going process and it is possible that their on-line catalogue today contains a wider data set of quarter session records, than was available when the data for this thesis was gathered.

of convicts transported from the West Riding quarter sessions between 1769 and 1776, and a small amount of material held on microfilm in the Doncaster Archives, which records some indictments in series AB5/2. As records pertaining to the work of quarter sessions are scattered amongst other record series, reference has also be made to the online catalogue.[73]

The same legal clerks undertook the administrative duties of the assize and quarter sessions and the continuity of administration between the two courts would have greatly facilitated the standardization of procedures in the criminal justice system. Evidence of that can be seen in the quarter session records for the West Riding, which is generally chronologically complete and well maintained. Records for the quarter sessions in the East and North Ridings have mixed survival rates, nevertheless, sufficient records have survived across the county of Yorkshire to create a substantial data base which covers both urban and rural areas and from which meaningful statistical evidence can be extracted.

Manorial courts continued to play a part in local law enforcement during the eighteenth century and dealt with a range of complaints from determining nuisances to settling personal disputes, complaints of trespass by livestock, petty thefts (such as theft of wood and gleaning) and minor assaults, verbal assaults and scolding.[74] Manorial courts had the power to impose fines for breach of local byelaws and impound animals that strayed onto the manor lands, as well as exercising a number of powers that crossed over with those exercised at petty and quarter sessions. However, a survey of the records of the manorial courts is beyond the scope of this thesis.

[73] West Yorkshire Archive Service online catalogue, http://catalogue.wyjs.org.uk/.
[74] Sharpe, J.A. (1999, first edition 1984) Crime in Early Modern England, 1550-1750, London and New York: Longman, pp. 37, 73; Crowther, J.E. and P.A. Crowther (editors) (1997), Diary of Robert Sharp of South Cave: Life in a Yorkshire Village 1812-37, Oxford: Oxford University Press for the British Academy, p. xxxix; Neave, David (1971) Pocklington 1660-1914: a small East Riding market town, Beverley, pp. 10-13.

Problems with the sources

Although every effort has been made to discern nuances between the motivations of the various parties concerned in the judicial process, the sources identified are bureaucratic records created for specific administrative purposes and, as such, do not necessarily contain hidden meanings in the intentions and effectiveness of a social policy. There is no authentic voice of the eighteenth century criminal trial as no verbatim records were made during this period; what does survive in newspaper reports and a few broadside accounts is edited and, by its nature, incomplete.[75] No notebooks of presiding judges have been located for this thesis and the evidence contained in printed reports was often self-serving, filtered for dramatic effect, and often represent the concerns of the middling classes and the perceived threat of the "rootless" urban poor to social disorder.[76] Witness statements are also likely to contain bias when prosecution accounts overstated a case and defence statements understated any part taken in a criminal activity, while the evidence of third party witnesses often included hearsay evidence; all statements were further susceptible to 'false memories', depending on the length of time between witnessing an event and making a statement.

Although depositions offering witness accounts are absent from the surviving records of quarter session proceedings for Yorkshire, that is compensated for (to some extent) by the survival of detailed indictments recorded in the minute books, particularly for the West Riding. The archival sources examined are rich and extensive use has been made of other printed sources, including: handbooks printed for lawyers and magistrates, local newspapers, printed broadsides, published books and articles and parliamentary statutes. The documents reviewed for this thesis are relevant and sufficiently detailed to allow

[75] Tosh, The Pursuit of History, pp. 119-143; King, Crime, Justice and Discretion, p. 46.
[76] Rawlings, Crime and power, p. 8.

patterns to emerge and for exceptions to stand out, thereby making it possible to subject the judicial processes and attitudes they represent to rigorous analysis.

Until 1733, assize calendars, indictments and some quarter session material were recorded in Latin. To minimise the problem of translation, the periods analysed in this thesis begin at 1735 when all records were recorded in English which allowed for greater accuracy when comparing quarter session and assize records. That was important in assessing whether or not the work of local magistrates and assize judges was truly distinct. A comparison of the work of the two tiers of criminal courts provided evidence of an overlap in the allocation of work between them during both periods surveyed and is consistent with other studies which suggest that assize judges actively encouraged magistrates to deal with a wider range of criminal cases than might be expected.[77]

The database of criminal records created for this thesis is flawed by the history of record keeping that precedes it. The reliability of data erodes at each stage information was recorded, archived or lost, ending with the evaluative judgements exercised by this author in selecting data which itself was selected by witnesses to a crime, legal clerks, justices of the peace and assize judges, the ministry of justice, local record offices and the PRO. At the same time, the ambiguity in the description of certain offences means that they have been excluded from particular aspects of data analysis. For example, between 8.0 and 12.0 per cent of offences listed in the quarter session records are described as a 'felony'. It has not been possible to determine whether those cases concern theft or other serious offence, therefore, they have been excluded from statistical tables of specific offences in chapters 4-7.[78]

[77] Cockburn, J.S. (1985) Calendar of Assize Records: Home Circuit Indictments Elizabeth I and James I, London: HMSO, p. 24.
[78] A felony is any serious crime punishable by death or forfeiture of lands and goods: Stubbs and Talmash, The Crown Circuit, p. 48.

References to murders, reported in sources other than the court minute books, serve to illustrate the problems in using court records prior to the introduction of a centralized collection of criminal data. For example, the murder trial of Josiah Fearn at the York Assizes in 1748 cannot be located in the assize minute book, although depositions survive along with a printed report of the trial in a contemporary broadside.[79] Many of the records reviewed for this thesis are previously unlisted and, although some sources have been used by other historians, no other study relating to the justice system operating in Yorkshire during the eighteenth century covers the range of sources surveyed for this thesis.

Having completed the survey of the sources used for this thesis and examined the theoretical and actual mechanisms for recording assize and quarter sessions proceedings in Yorkshire, it became increasingly apparent that the omission of a recorded verdict against an entry in the minute books of both courts is more to do with the failure or redirection of some prosecutions, than the intermittent failure of legal clerks to record some verdicts. There is, of course, no way to prove that hypothesis but there were a number of procedures which would cause a trial to be adjourned and might explain the failure of a clerk to annotate the minute books with an outcome that was determined at a later date. A trial for a misdemeanour could be set aside to allow the parties to reach a private settlement;[80] a hearing could be adjourned to a later date to allow a traverse to an indictment to be separately determined;[81] questions on process in a lower court were referred to the King's Bench;[82] while many victims failed to prosecute their complaints for a range of reasons considered in this thesis.

[79] TNA ASSI 45/24/1/26-34A, Feb 1748, depositions in the matter of Josiah Fearn; Anon (1749, second edition) The Trial of Mr. Josiah Fearn, etc., York: printed by Cæsar Ward.
[80] See pp. 55-56.
[81] See p. 91.
[82] See pp. 119-1204.

Methodology

Observations made and conclusions reached in this thesis are based on an analysis of quantitative research (8,500 cases). The quantification of crime data is an important tool in attempting to understand crime in a past society, although it is only 'a history of what got recorded' and is likely to reflect contemporary preoccupations.[83] Kermode and Walker criticized "broad theories based largely upon a quantitative methodology" because they "neglect the dynamics of human interaction and deny agency to historical actors".[84] Nonetheless, quantitative research provides a starting point from which discussion and speculation can follow. Kermode and Walker further argued that because women do not appear in the court records in comparable numbers to men, they cannot be compared in a like manner. In order to overcome such problems, judicial responses to female activity are not measured only against male criminality but against responses to all women who commit similar types of offences.[85] Nevertheless, this thesis does not ignore the benefits that can be gained in the use of qualitative data in the form of individual case studies, in order to find social meaning beyond the numbers. Historians such as Carlo Ginzburg advocated reducing the scale of observation as an alternative method of inquiry, even if only to test the outcomes of statistical studies preferred by the likes of François Furet.[86] Giovanni Levi similarly observed that the use of microhistories allowed for the examination of the individual within the normative systems which govern him or her, as exemplified by Vic Gattrell's microstudy, 'The Rape of Elizabeth Cureton'.[87] While the aim of using individual studies is to determine what happened within the events described,

[83] Sharpe, Crime in Early Modern England, p. 21, n. 47.
[84] Kermode, J. and G. Walker (editors) (1994) Women, Crime and the Courts in Early Modern England, London: UCL Press Limited, p. 4.
[85] Kermode and Walker, Women, Crime and the Courts, p. 4.
[86] Ginzburg, Carlo (Autumn 1993) 'Microhistory: Two or Three things That I know about it', Critical Inquiry, 20, University of Chicago, pp. 10-35, p. 22; Furet, François (1971) 'Quantitative History', reprinted in Revel, Jacques and Lynn Hunt (1995) Histories: French Constructions of the Past, New York: The New Press, pp. 333-348.
[87] Levi, Giovanni (1991) 'On Microhistory', in Burke, Peter, New Perspectives on Historical Writing, Cambridge: Polity Press, pp. 93-113, p. 94; Gatrell, V.A.C. (1996) 'The Rape of Elizabeth Cureton', The Hanging Tree: Execution and the English People 1770-1868, Oxford: Oxford University Press, pp. 447-493.

every effort has been made to avoid the risks of reading too much into individual texts, which provide just one person's insight to the events relayed.[88] Although, as Rabin observed, the use of individual cases cannot explain why grand and petty juries reached their verdicts when their deliberations were in secret, nevertheless, the rich detail of deposition statements provide insights that can be generalised.[89]

Historians such as King combine both quantitative and qualitative methods, on the basis that the former is helpful in evaluating the typicality of conclusions reached by other historians, while the latter allows for a study of the specific language of documents as an important aid in understanding the 'why' in decision-making.[90] Likewise, Sharon Howard's study of community responses to theft in early-modern Wales made effective comparisons between quantitative studies of crimes that led to court trials and qualitative testimonies that provide evidence of informal sanctions in the community and failures by some to respond to the crimes committed against them.[91] Walker's study of crime and gender in seventeenth-century Cheshire also married quantitative and qualitative material for "a more sensitive interpretation of crime and subjectivities".[92] The creation of an extensive database brings an important element of objectivity to the thesis, despite inherent problems of mediation, and provides a foil to subjective presumptions on gendered leniency, the paternalistic magistrate and the case-hardened judge.

Economic and social background

At the beginning of the eighteenth century, the economy of England was still largely agrarian and social and criminal sanctions were based on the philosophy of a Christian, patriarchal hierarchy. The law and church directed that the purpose of marriage was

[88] Tosh, The Pursuit of History, pp. 203-205.
[89] Rabin, Identity, Crime and Legal Responsibility, pp. 6-7.
[90] King, Crime, Justice and Discretion, pp. 298-301.
[91] Howard, 'Investigating responses to theft'.
[92] Walker, Crime, Gender and Social Order, p. 8.

procreation but each censured sex outside marriage and condemned those who committed abortion or infanticide.[93] At the same time, Parliament began to redefine certain customary practices as theft and escalated the policy of enclosure which withdrew from communal access an increasing proportion of open and common land, which had in previous times provided a useful supplement to inadequate wages.[94]

While large parts of Yorkshire remained mostly rural, it was at the centre of the wool industry and emerging manufacturing trades. The geography of Yorkshire was particularly suited to the developing textile trade where pasture land was abundant for raising sheep and soft water in the rivers was suitable for cleaning wool. Although many families in the West Riding of Yorkshire with modest landholdings were actively engaged in the woollen industry, many continued to work the land attached to their houses. This 'alliance of land and loom' enabled those with dual occupations to be better able to cope with seasonal unemployment and economic downturns.[95] Some landlords, including those in the East Riding of Yorkshire, were concerned with the association of rural industry and rural poverty. They contrived to manage demands for labour and on the poor rates by limiting the industry in 'closed parishes' by restricting the construction of new cottages and importing seasonal workers to large estates and farms. As a result, dual occupations were less readily available in closed parishes and their inhabitants more susceptible to cyclical downturns in the economy.[96]

[93] Black, J. (2005) Culture in Eighteenth-Century England: A subject for Taste, London: Hambledon Continuum, p. xvii.
[94] Black, Culture in Eighteenth-Century England, p. 72; 22 & 23 Ca. II, c.25 (1670/1671): An Act for the better preservation of the Game, and for secureing Warrens not inclosed, and the several Fishings of this Realme, for killing conies; 6 Anne c.16 (1706), The Game Acts.
[95] Malcolmson, Robert W. (1981) Life and labour in England 1700-1780, London: Hutchinson, p. 39.
[96] Malcolmson, Life and labour in England , pp. 42, 140.

During the course of the century, coal-mining prospered in the coalfield south of Leeds and Sheffield became an important centre for metalworking.[97] Economic productivity was dependent on manual labour so that during the eighteenth century the population of Leeds grew from 7,000 to 17,000 and that of Sheffield from about 5,000 to 46,000.[98] As a growing population of workers became divorced from the land, the most common cause of social conflict during the eighteenth century concerned rises in food prices when, it is estimated, between 50 and 80 per cent of the income of labouring families was spent on food.[99]Although 'poor law' legislation provided some relief for the able-bodied poor, there remained little understanding of cyclical downturns and under employment at certain times of the year, or in times of dearth, that led to social unrest and rioting.[100] These conditions occurred intermittently during the eighteenth century, including 1740 and 1766/67. However, an increase in real wages in the industrial areas of West Yorkshire around the 1760's allowed many industrial labourers to cope with raising grain prices, in contrast to the greater part of the country where wages real wages proved to be inadequate.[101] For that reason, Yorkshire did not experience the same level of rioting in 1760 as witnessed in 1740 and examined in chapter 7.

Society was organised around the family with a man at its head and women had few legal rights to property while they remained under the control of a father or husband. Nevertheless, the position of women was not unimportant and many poor women continued to work after they married, although that might be confined to the home. Furthermore, as consumers of household goods and food stuffs, women were able to move

[97] Malcolmson, Life and labour in England, pp. 47, 53.
[98] Hey, David (1986) Yorkshire from AD 1000, London : Longman, pp. 221-239; Berg, Maxine (Winter, 1996) 'Women's Consumption and the Industrial Classes of Eighteenth-Century England', Journal of Social History, vol. 30 (2), pp. 415-434, p. 416; Fletcher, Joseph Smith (1918) The Making of Modern Yorkshire, 1750-1914, London: G. Allen & Unwin, www.archive.org/stream/makingofmodernyo00fletiala/makingofmodernyo00fletiala_djvu.txt, accessed 7 November 2011.
[99] Malcolmson, Life and labour in England, p. 112.
[100] Black, Culture in Eighteenth-Century England, p. xix.
[101] Malcolmson, Life and labour in England, pp. 145-146.

about the market place and community as they carried out their household duties.[102] However, when it came to matters of rape, pregnancy, childbirth and infanticide there was a silent but pervasive element in the processes of investigation, prosecution and defence of matters relating to a woman's chastity that was ultimately concerned with matters of inheritance and rights to property.[103] As Samuel Johnson observed, "Consider, of what importance to society the chastity of women is. Upon that all the property in the world depends. We hang a thief for stealing a sheep; but the unchastity of a woman transfers sheep and farm and all from the right owner".[104]

Whether considered in a social, moral or judicial sense, women were regarded as being different from men. With one exception, women had no administrative role in the judicial system:[105] their legal personality was inferior to that of men and women were judicially discriminated against as specific laws made allowances for the treatment of the *sole femme* and the *femme covert* on very much the same conditions as it did for juveniles and lunatics.[106] In theory, women were accountable in criminal proceeding on equal terms with men, although the common law allowed married women limited protection from criminal prosecution where the civil law concept of the *femme covert* was applied to claims of marital coercion: as such it provided a potential escape route for a married woman from criminal prosecution. The eighteenth-century jurist, William Hale, claimed that: "a f*emme covert* is so much favoured in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft in company

[102] Black, Culture in Eighteenth-Century England, p. xvii.
[103] See pp. 43, 188, 235.
[104] Boswell, James (editor) (1897) The Life of Samuel Johnson, LL.D, to which is added the Journal of a tour to the Hebrides, p. 593, from a letter written Tuesday 14 September 1773; see also Stone, Lawrence (1977) The Family, Sex and Marriage in England, 1500-1800, London: Weidenfeld and Nicholson, p. 637.
[105] If a woman 'pleaded her belly' following a capital conviction the truth of her condition was determined by a jury of matrons (married women).
[106] The term *sole femme* refers to the legal status of single and widowed women and *femme covert* refers to married women.

with, or by coercion of, her husband".[107] That was a theme developed by William Blackstone during the course of the eighteenth century, such that he suggested that where a woman acted on the authority of her husband the 'privilege' of marital coercion might excuse a wife from punishment for some capital offences (excluding treason and murder).[108] The basis for his opinion was the notion that a woman existed under the legal guardianship of her father until she reached the age of twenty-one, or to her husband upon marriage.[109] To that extent the capacity of a woman to think or act independently was placed at a lower level than that of a son or servant, both of whom were expected to withstand any criminal coercion from a father or master. Although it has even been suggested that the concept of the *femme covert* may have extended to a general notion of patriarchy that acted to the benefit of all women, whether married or single,[110] the evidence of sources examined for this thesis demonstrate that married women could be (and were) indicted and punished separately on many occasions and for most types of offences.[111]

When a woman committed a crime her conduct offended society on two levels: firstly, as a subject of the State and, secondly, as a subject of her father or husband and on both levels her actions undermined the normal social hierarchies. Differences were reinforced in conduct books published during the eighteenth century for the guidance of young women and reflect the contemporary image of the female 'disposition', advising them that their true interest lay in "cherishing and improving" their "amiable dispositions" and in

[107] Hawkins, William (1739, third edition, first published 1715) A treatise of the pleas of the Crown: or, a system of the principal matters relating to that subject, digested under their proper heads, vol. 1, London, p. 2.
[108] Blackstone, Commentaries, vol. 4, 432.
[109] Blackstone, Commentaries, vol. 4, pp. 421, 430.
[110] Emsley, Crime and Society, pp. 98-99, in which Emsley more particularly observed that notions of *femme covert* worked to protect women who worked in the cloth trade. See also, King, Crime and Law in England, 1750-1840.
[111] Hufton, Olwen (1993) 'Women, Work, and the Family' in Davis, N.Z. and A. Farge (editors) A History of Women: Renaissance and Enlightenment Paradoxes, Cambridge, Massachusetts and London, England: Belknap Press of Harvard University Press, pp.15-45.

"keeping down all rough and boisterous passions".[112] However, behaviour expected of the daughters of the rich was very different to that expected of the daughters of the poor.[113] A conduct book written for domestic maids in 1743 warned them, *inter alia*, about dishonesty, entering into quarrels and on matters of chastity with men servants, the 'master', his sons and gentlemen lodgers.[114]

Outline of the thesis

The aim of this thesis is to gain a better understanding of the experience of men and women who committed crime during the period when transportation to America was the statutory solution to the excesses of the 'Bloody Code'. The objective was to undertake a detailed examination of primary and secondary legal sources relating to the work of the quarter sessions and assize courts in Yorkshire between 1735 and 1775, and analyse that material in relation to the trial and pre-trial processes and specific offences against property and the person. The position of the periods surveyed enables this thesis to add to the work of historians such as Walker, Rabin, King and Palk on the criminality of women and their encounters with the judicial system. A major theme is the consideration of other historians' interpretations of evidence for and against the exercise of gendered leniency at various stages of the judicial process. It does not necessarily seek to refute or confirm their conclusions but places the evidence of gendered decision-making within the context of an evolving common law and a growing body of statutory offences. Those laws were in turn administered through a judicial process that was itself subject to change, as evolving rules

[112] Fielding, Sarah (1749, second edition) The Governess; or The Little Female Academy. Calculated for the Entertainment and Instruction of Young Ladies in their Education, London: A. Millar, p. iii. Sarah Fielding was the sister of the London magistrate, Henry Fielding.
[113] Hill, Bridget (1984) Eighteenth Century Women: An Anthology, London: George Allen & Unwin (publishers) Ltd, pp. 44-68.
[114] Haywood, Eliza Fowler (1743) A present for a servant-maid. Or, the sure means of gaining love and esteem, London: T. Gardener. The title of a later version of the book published in 1771 stressed the issue of morals over love, Haywood, Eliza Fowler (1771) A present for a servant-maid: containing rules for her Moral Conduct both with respect to Herself and her Superiors: The Whole Art of Cookery, Pickling, Preserving etc., London: G. Pearch and H. Gardener.

of evidence and procedure influenced the experiences of individuals caught up in the criminal process. As result, this thesis considers the evidence of changing attitudes to gendered leniency by examining the interplay between the rules of law, evidence and procedure, and the exercise of discretion in interpreting those rules.

This thesis considers responses to criminal offending and the role of transportation that were limited in their availability before 1717 and were significantly altered after 1775. From the late sixteenth century, orders for transportation to America were recognised by statute as a way of disposing of vagrants and undesirables[115] and over the course of the seventeenth century powers were extended to permit the transportation of felons,[116] political prisoners[117] and capital convicts reprieved by the king's mercy.[118] While transportation is mentioned in other seventeenth-century studies for London and Surrey,[119] it does not appear to feature in the sentencing practices described by Walker in the courts of Cheshire. It was not until the statute of 1718 that fixed terms of transportation were universally imposed as the sentence for a range of crimes, such as receiving stolen goods.[120] By the 1770s, prisoners transported to America found themselves in a structured and well developed environment, based on an English system of civil administration, [121] while advances in shipping meant that the mortality rate during the course of the trans-Atlantic voyage had greatly reduced over the course of the eighteenth century.[122] However,

[115] 39 Eliz. I, c.4 (1597) The Vagabonds Act.
[116] Transportation of felons by the courts was first authorized by the Privy Council in 1615, in response to labour shortages, in Virginia and the West Indies.
[117] During the Commonwealth (1649-1660), transportation was used for Irish rebels, prisoners of war, vagrants etc., who were sent to the American colonies, principally in the Caribbean where their labour was needed. After the Restoration, convicts were sent to the North American colonies and the Caribbean, until black African slaves began to be bought in large numbers.
[118] See Coldham, Peter Wilson (1992) Emigrants in Chains: A social history of forced emigration to the Americas of felons, destitute children, political and religious non-conformists, vagabonds, beggars and other undesirables, 1607-1776, Surrey: Genealogical Publications Company.
[119] Beattie, Crime and the Courts, pp. 470-483.
[120] 4 Geo. I, c.11 (1718).
[121] See, Shaw, A.G.L. (1966) Convicts & the Colonies, London: Faber and Faber.
[122] Ekirch, A.R. (1992, first published 1987) Bound For America: The Transportation of British Convicts to the Colonies, 1718-1775, Oxford: Clarendon Press, pp. 104-105. Ekirch estimated that mortality rates during voyages between England and America fell from 10.7 % in 1736 to 2.3% by 1770.

studies by Palk and MacKay concern the period post 1780 when the circumstances of transportation changed, so that convicts were transported to the new colonies in Australia, where the voyage was long and difficult and conditions in the colonies severe. In addition, with an increase in the number of gaols in England, opportunities for custodial sentences after 1780 were more commonly available. Such significant changes in sentencing arrangements must have influenced sentencing practices to some extent, therefore, sentencing patterns identified in this thesis which pre-date 1775 are not directly comparable to outcomes observed in gendered studies of periods post 1775.

Part one (chapters 1-3) involves an examination of judicial processes in the pre-trial, trial and sentencing stages at quarter sessions and assizes, with analysis of private and institutional attitudes to gender where appropriate. The pre-trial process is examined in chapter 1 and concerns the means by which crimes were identified and complaints laid before a magistrate, despite King's warning that with the pre-trial process "there is more darkness than light; more silences than explanations; more anecdotal evidence than systematic data".[123] There were a range of formal and informal processes open to a potential prosecutor. Chapter 1 includes consideration of the role of family and community in dealing with troublemakers, methods used to identify and apprehend suspected offenders and the roles played by individual men and women in the detection, mediation and prosecution of crime. It assesses the role of the legal profession in the arbitration process, the prohibition on private settlements of felonies, evidence of private settlements for all forms of non-fatal assaults and gendered restrictions on individuals with limited or no independent financial means. It considers the use of accomplice evidence to secure the conviction of one party while exempting an associate from prosecution; and responses to the reward system which encouraged professional 'thief takers' and admitted 'corrupt'

[123] King, Crime, Justice and Discretion, p. 46. See also, Herrup, The Common Peace, p. 2.

evidence to secure convictions. The chapter examines the summary powers of justices of the peace to determine minor civil and criminal disputes and questions evidence of the exploitation of their authority, suggested by Norma Landau, through the application or withholding of recognizances to compel individuals to keep the peace, attend court or to commit suspects before trial.[124]

Chapters 2 and 3 are separately concerned with the criminal jurisdiction of the quarter sessions and assize courts and include an examination of the experiences of men and women appearing before either court. Both chapters begin with a survey of the work allocated to that court and consider changes in the division of work as a reflection of changing legislation and sentencing provisions. They include a description of judicial procedures from the time a bill of complaint was laid before a court to the sentencing of those convicted of a crime and examine the roles of the various legal officers and other parties involved in the defence and prosecution processes. Chapter 2 and 3 include a gendered study of issues concerning limited access to legal representation and the effect of that on a defendant's ability to take advantage of emerging rules of evidence and procedure, present a simple defence, or take advantage of the traverse and *certiorari* procedures to challenge the prosecution case or a judicial decision.[125] Both chapters analyse gendered aspects of conviction rates and sentencing policies and assesses evidence of gendered applications of partial verdicts by petty juries which generally favoured women. In considering the motivations of decision makers, they include the examination of evidence of the influence of gender, social and marital status at different stages of the judicial process. They question whether there was a move towards the more lenient treatment of women over the course of the eighteenth century and examine evidence for

[124] Landau, Norma (1984) The Justices of the Peace, 1679-1760, California, London: University of California Press, pp. 185-186.
[125] See glossary.

and against that point of view when, for example, judicial punishments in Yorkshire continued to involve the public whipping of women throughout the periods surveyed, contrary to findings by other historians for other regions of the country.[126] Both chapters consider the almost universal extension of the benefit of clergy during the seventeenth century, swiftly followed by the removal of the benefit by a series of statutes during the eighteenth century and appraise the role of transportation in the sentencing and pardoning processes. Chapter 3 further examines the ways in which men and women were saved from the exigencies of the 'Bloody Code' following conviction for a capital offence and the power of a circuit judge to deny or recommend an individual for the king's mercy.

Part two (chapters 4-7) examines the degree to which the gender or marital status of the accused affected the indictment, conviction and sentencing processes and how that varied according to the nature and seriousness of specific offences; namely homicide, non-fatal assaults, theft and riot. They compare the findings for the main periods surveyed with the results of similar studies in order to build on Walker's challenge to "assumptions about gender and crime" during the late sixteenth and early seventeenth centuries;[127] consider the evidence of "gendered discretion" identified by Palk and King in the late eighteenth and nineteenth centuries,[128] and examine any evidence in eighteenth century Yorkshire of the "vanishing female" described by Feeley and Little.[129] Chapter 4 begins with an appraisal of the crimes of homicide, including the legal and gendered nuances between the common law offences of murder and manslaughter, and the statutory offences of petit treason and infanticide. It includes a gendered examination of those who committed homicide in

[126] King, Crime and Law in England, 1750-1840, p. 193; Morgan, Gwenda and Peter Rushton (1998) Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718-1820, Florence, KY, USA: Routledge, pp.130-131. The public whipping of women was abolished in 1820 (1 Geo. IV, c.57) and that of men ended in the early 1830s, though it was not formally abolished until 1862.
[127] Walker, Crime, Gender and Social Order, p. 279
[128] Palk, Gender, Crime and Judicial Discretion, p. 176; King, 'Decision-Makers', p. 56; King, Crime, Justice and Discretion, p. 278-288.
[129] Feeley and Little, 'The Vanishing Female'.

relation to the gender of their victims and the selection of the 'appropriate' man or woman to undertake the prosecution process. There follows an evaluation of the gendered surveys of conviction rates and sentencing practices and an examination of the evidence of gendered decision-making by petty juries in determining whether an individual was guilty of murder or manslaughter, or innocent of either crime. It assesses reasons for the reluctance of juries to convict many murderers and the readiness of circuit judges to recommend all but the most violent men for a reprieve by way transportation.

Chapter 4 highlights issues concerning judicial responses to the use of excessive force by a man in exercising the natural authority he held over his wife, children and servants and the situation in which the law allowed for the different sentencing of men and women who were convicted of almost identical offences. In particular, it adds weight to other studies which dispel the myth perpetuated by contemporary commentators, that the use of poison was the *modus operandi* favoured by women who killed.[130] The chapter questions the willingness of juries to exercise any discretion in the conviction of women who killed their husbands, when the statutory conditions allowed only for a capital sentence (by burning at the stake) without the benefit of a judicial recommendation for mercy. It also examines the relationship between bastardy and infanticide and the role of women in identifying and providing evidence against other women thought to have killed a bastard child. It considers how the statutory definition of infanticide either allowed, or caused, juries in Yorkshire to be far more creative in interpreting the law, so that the evidential hurdles negotiated in interpreting the law were manipulated to avoid rather than secure convictions.

[130] Beattie, J.M. (Summer, 1975) 'The criminality of women in eighteenth-century England', Journal of Social History, vol. 8 (4), pp. 80-116, p. 83; Walker, Crime, Gender and Social Order, pp. 144-145.

Chapter 5 concerns the examination of non-fatal assaults and responses to violence displayed both by and against men and women by way of common assault, rape and sodomy. It includes gendered surveys of the indictment, conviction and sentencing of men and women charged with an assault and considers the prominence of the offence in the work of the quarter sessions throughout the eighteenth century. Although it is not always possible to determine the level of violence complained of in any particular claim, as a crude indicator, it is possible to distinguish between the relatively low number of complaints in assault referred to the assizes, compared to the quarter sessions, in order to conclude that the vast majority of assaults were committed by men and that they were probably relatively minor incidents. The chapter examines evidence of a growing intolerance of disorderly behaviour generally and more particularly towards women who displayed 'masculine' aggression, so that a higher percentage of women accused of assault were convicted for that offence in the lower court, compared to their male counterparts, although the actual numbers were much smaller. Chapter 5 reviews the use of orders to keep the peace, when few claims of domestic violence were settled by orders to keep the peace, and legal restrictions on the ability to bind women by contractual orders that all but excluded them from having access to those orders as an alternative sentence. The offences of rape and sodomy are examined as distinct offences that could only be committed by a man and the chapter includes consideration of evidence that the low incidence of complaints for either offence resulted from the use of private settlements, in order to avoid the public humiliation of the victim and/or defendant. There are no comparative, gendered studies of the offence of assault across the assize and quarter sessions in order to assess judicial response to women who violated conventional ideas of female respectability and it is, therefore, an area that requires greater investigation

Chapter 6 includes an examination of judicial responses to popular concerns about the perceived increase in all types of theft at a time of rapid growth in commercial trade and urban populations. Evidence of gendered and discretionary decision-making in the capture, prosecution, conviction and sentencing of identified thieves is considered against a background where theft was by far the largest category of offences in all the proceedings before both the quarter session and assize courts for Yorkshire. The chapter includes consideration of scope for the exercise of discretionary mercy by victim prosecutors and 'pious perjury' by juries, through an undervaluing of the goods stolen while retaining the right to punish the offender for an offence short of a capital felony.

Chapter 6 involves a gendered examination of the law relating to the specific offences of burglary, theft from a master, theft from a shop, theft in the cloth trade, horse theft and theft of other livestock. Gendered responses to specific property offences in eighteenth-century Yorkshire are compared with Walker's evidence from seventeenth-century Cheshire, that women were not the general recipients of judicial clemency in cases of theft.[131] Chapter 6 considers evidence of a general decline in the number of women accused of theft in Yorkshire and examines reasons why that occurred in relation to female motivations to steal. It includes an assessment of contemporary anxieties associated with the textile industry and questions the relationship between the relative failure to prosecute those who received stolen goods under the statute of 1718 and opposing legislation which rewarded accomplices who turned 'king's evidence. The chapter includes a survey of the division of work between the assize and quarter sessions and a gendered examination of the conviction and sentencing patterns in each court. It analyses evidence of the harsher sentencing of women who had already benefited from some act of mercy during the judicial process against evidence of a general reluctance to allow a woman to hang.

[131] Walker, Crime, Gender and Social Order, p. 178.

Crimes of robbery, highway robbery and pick-pocketing are excluded from the chapter 6 because the element of violence against the person changes the nature of the offence. The offence of obtaining property by fraud is also omitted from this chapter because it lacks the element of taking 'by force of arms' necessary to establish a larceny. Likewise, crimes of theft from woodland, trespass and poaching which formerly fell within a category of customary rights are also excluded from the types of theft considered.

The food riots examined in chapter 7 bring together the issues raised in the preceding chapters as they relate to gendered participation in various acts of violence and larceny associated with the food riots of 1740. While E.P. Thompson and others have explored issues surrounding the cause of food riots and male and female participation, little has been written about the relative experiences of men and women in subsequent legal proceedings. It examines gendered behaviour during the course of the riot and considers contemporary points of law, the decision to prosecute (or not), prevailing rules of evidence and procedure and the sentencing options available to the court following conviction. Attention is paid to evidence of *charivari* and the tradition of carnival used by protestors to mock those in authority. It compares contrasting responses to grain shortages in each of the three Ridings to explain why it was necessary only for men and women from the West and North Ridings to rail against the millers and merchants held responsible for the export of grain and those in authority who failed to control grain prices through the assize of bread. Chapter 7 examines the responses of those in authority when faced with a choice between upholding the law and responding to the needs of the local population who did not in other circumstances pose a threat to social order.

The analysis of specific crimes in chapter 4-7, in which men and women were active participants, contributes to the understanding of the bravery of women and their initiative in planning and carrying out a range of crimes as well as to the discretionary and gendered treatment of men and women at all stages in the judicial process.

Chapter 1. The judicial process (1): Detection of crime, the decision to prosecute and the role of the single magistrate and petty sessions in Yorkshire.

A crime is a moment when a culture fails in its own terms, a moment when microsystems challenge macrosystems of power and values.[1]

In 1735 Hester Norton was accused of stealing a number of small items in gold and silver, money and clothing from her former employer, George Gray of Stillingfleet, Yorkshire. Gray was made aware that Norton was the thief when she tried to sell a silver tumbler to William Thompson who lived seven miles away in York. Having heard something of Norton's bad character, Thompson concluded that she had stolen the item and reported his suspicions to a magistrate. Following further enquiries, Gray was located and he identified the tumbler as his and reported an extensive range of other missing items. Norton confessed to the theft of the tumbler and two gold rings and Gray was bound in the sum of £20 to prosecute her at the following assizes.[2]

The case of Hester Norton is fairly typical of pre-trial procedures in operation during the eighteenth century in which the task of identifying and pursuing an offender fell on the victim or some other private individual who took an interest in the matter.[3] This chapter examines the roles played by men and women who were the victims of crime and those suspected of having committed one. It considers different responses to pre-trial procedures following the detection of a crime from the point of investigation to the detention of suspects; the role of negotiation and mediation in private settlements; the role of the single

[1] Muir, E. and G. Ruggiero (editors) (1994) History from Crime, Baltimore and London: The John Hopkins University Press, p. viii.
[2] TNA ASSI 45/20/2/129-132, (1735), depositions and recognizance in the matter of Hester Norton.
[3] Cornish, W.R. and G. de N. Clark (1989) Law and Society in England 1750-1950, London: Sweet and Maxwell, pp. 544-545; Howard, Sharon (2004) 'Investigating responses to theft in early modern Wales: communities, thieves and the courts', in Continuity and Change, vol. 19 (3), pp. 409-430, p. 417.

justice; the function and use of recognizances to secure the attendance of witnesses; and the decision to release a defendant on bail or commit him or her for trial.

Investigation of crimes and detention of suspects.

Deposition statements taken by a magistrate (or coroner) from victims, witnesses and the accused were not submitted as evidence in a trial but formed the basis of committal papers for trial at the assizes and provide a useful tool for examining how suspects were identified and evidence gathered. Local knowledge and the support of the community were essential in assisting the victims of crime who were expected to take the lead role in the detection, arrest and committal of suspected criminals. Wrightson's study of seventeenth century Chelmsford and Lancashire led him to observe a close link between community relationships and good public order; although, that scenario may have become less effective as the country became more 'urbanized' during the course of the eighteenth century.[4] King identifies sixteen ways in which crimes were detected in Essex, ranging from being 'seen in the act' to having been 'overheard' planning a crime.[5] When Thomas Aikney was accused of the murder of John Boardingham by stabbing him, nine year old Mary Boardingham provided the evidence that identified Aikney as the culprit, recognising the knife left at the scene of the crime as one she had seen many times in Aikney's possession.[6] The infamous highway man, John Palmer (alias Dick Turpin), was first identified by a servant who recognised him and finally captured after his real identity was revealed when his handwriting was recognised in a letter he sent to his home.[7]

[4] Wrightson, Keith (1980) 'Two concepts of order: Justices, constables and jurymen in seventeenth-century England', in Brewer, J. and J. Styles (editors) An ungovernable people: the English and their law in the seventeenth and eighteenth centuries, London: Hutchinson, pp. 21-46, p. 45.
[5] King, Peter (2000) Crime, Justice and Discretion in England 1740-1820, Oxford: Oxford University Press, p. 21.
[6] TNA ASSI 45/32/2/11 (1776), information of Mary Boardingham taken before Richard Cross, coroner for the East Riding of Yorkshire.
[7] Anon., 'Dick Turpin - hero or villain', York Castle Museum: Collections, www.yorkcastlemuseum.org.uk/Page/ViewCollection.aspx?CollectionId=24, accessed 10 July 2012.

Many women were active in the detection and reporting of crimes committed by or against other women. On the one hand, female friendships amongst neighbours provided a source of help and support to other women during times of sickness, childbirth and other hardships, and when they acted as confidants to those with abusive husbands. On the other hand, observant friends and neighbours were often the very people who carried out investigations and reported other women who transgressed social and legal mores.[8] Married women and widows were commonly called to view the corpse of a woman or child, as a matter of decency and for their 'expert' knowledge of the female body and birthing process, although their skills were frequently derided by 'professional' men as "a parcel of gin-drinking old women appointed by the parish officers".[9] This work allowed married and widowed women to participate in the detection and reporting of crimes committed by men as, for example, when George Bulmer was charged with the murder of his wife following the examination of her body by five women who had been called to lay her out.[10]

Married or widowed women were often the first people to examine the victims of rape, or single women suspected of being pregnant or having committed infanticide. They could be asked to examine an accused woman's breasts for signs of milk or search her room for signs of recent labour and delivery.[11] When Isabel Ward was accused of infanticide in 1741, one of the churchwardens asked a midwife to examine Ward as he suspected that she had recently given birth.[12] Likewise, when Jane Bray claimed that she had been raped two

[8] Gowing, Laura (1997) 'Secret Births and Infanticide in England', Past and Present, 156 (1), pp. 87-115, p. 91; Capp, Bernard (2003) When Gossips Meet: Women, Family and Neighbourhood in Early Modern England**,** Oxford: Oxford University Press, pp. 58-59.
[9] Andrews, Alexander (1856) The Eighteenth Century or illustrations of the manners and customs or our grandfathers, London: Chapman and Hall, pp. 49-50
[10] TNA ASSI 45/32/1/40-4 (1775), depositions taken in the matter of George Bulmer.
[11] Gowing, 'Secret Births', pp. 91-92. The role of men and women in the prosecution of violent crimes is considered in more detail in chapters 4 and 5.
[12] TNA ASSI 45/22/1 ff.168-169, May 1741, depositions in the case of Isabel Ward.

midwives examined her body for evidence of bruising and other injuries.[13] Where suspicions were aroused, people could go to extraordinary lengths to establish the truth of a matter. When Jane Brown was suspected of having given birth to a bastard child and burying the body, her master went so far as to instruct the local blacksmith to make an instrument to enable him to search a vault in which he thought she had dropped a baby. Using the purpose-made tool, the body of a baby was discovered.[14]

As Laura Gowing observed, "the governing institutions of early modern England devoted a considerable amount of time to the prosecution of women for sexual offences".[15] While sexual impropriety touched on the laws of inheritance,[16] for the wider community the consequence of a sexual liaison outside marriage presented a potential burden on the parish rate which affected and, therefore, interested the constables, overseers of the poor and other concerned rate payers.[17]

Married and single women were equally placed to assist in the detection of stolen domestic goods when they were removed from the home or noticed at another location.[18] However, female 'solidarity' was likely to be an early casualty when suspects were persuaded to turn king's evidence against their co-accused.[19] When Mary Ormand and three female co-defendants were accused of the theft of clothing, her co-defendants and

[13] TNA ASSI 45/21/3 ff. 52-54, 1739, depositions in the case of John Elliott.
[14] TNA ASSI 45/28/1/5 (1764), examination of Peter Reynolds, blacksmith.
[15] Gowing, Laura (1998, first edition 1996) Domestic Dangers: Women, Words, and Sex in Early Modern London, Oxford: Oxford University Press, p. 3.
[16] See p. 28.
[17] Kilday, Anne-Marie (2010) 'Desperate Measures or Cruel Intentions?: Infanticide in Britain since 1600', Kilday, Anne-Marie, David S. Nash (2010) Histories of Crime: Britain 1600-2000, Basingstoke: Palgrave Macmillan, pp. 60-79, p. 63.
[18] Walker, Garthine (2003) Crime, Gender and Social Order in Early Modern England, Cambridge: Cambridge University Press, pp. 165-166; Walker, Garthine (1994) 'Women, theft and the world of stolen goods', in Kermode, J. and G. Walker (editors), Women, Crime and the Courts In Early Modern England, London: UCL Press Limited, pp. 81- 105, pp. 93-94.
[19] 4 Geo. I, c.11 (1718), An Act for the further Preventing Robbery, Burglary and other Felonies and for the more effectual Transportation of Felons, the Act provided, *inter alia*, that anyone sharing in benefit of theft was deemed to have committed a felony on same terms as the principal offender, unless they turned evidence against them. During the course of the century, legislation relating to the theft of specific types of goods introduced additional rules for the punishment of those convicted of receiving stolen goods.

other female associates gave evidence against her.[20] Mary Boynton claimed that she bought one of the stolen dresses from Ormand for 5s.; Mary Richmond identified the same gown as belonging to Rachel Sadler; Martha Scott stated that she had bought some clothing from Ormand; Mary Whitehead asserted that she purchased items from Mary Ormand which she believed to have been stolen; while Elizabeth Goatham's evidence was that she collected stolen items on behalf of Ormand and Elizabeth Torton from another woman, Mary Colburne.[21] At the subsequent trial of four female co-defendants for theft only Ormand was convicted. That case illustrates the world of female criminality described by Walker in which women might quite easily dispose of stolen household goods and clothing within their circle of friends and neighbours.[22] It also highlights the fragility of such friendships when the law intervened and threatened to sentence a thief to death or transportation but offered a way out to an accomplice who was willing to give evidence against a friend or neighbour.

Once a woman wandered into a male environment she put herself at greater risk of detection by a wider community in which she may not have had sufficiently close ties to protect her. Mary Ormand's biggest mistake was to steal from the house of Sir William Lowther, M.P. for Pontefract, which meant that her crimes were personally, and thoroughly, investigated by a magistrate on behalf of Sir William. At another level on the social scale, when Ann Rogers stole clothing and household goods from the house of Joseph Oliver, a baker in Sheffield, she was apprehended by a fellow-baker in a public house who witnessed her attempt to sell the goods.[23] Likewise, the crimes of the afore-

[20] TNA ASSI 45/20/1/ 63-94 (1735), depositions and recognizances in the matter of Mary Ormand and Elizabeth Torton; TNA ASSI 41/2 ff. 119, City of York gaol delivery record for 11 March 1735.
[21] TNA ASSI 45/20/1/ 63-94 (1735), depositions and recognizances; TNA ASSI 41/2/119, City of York, March 1735.
[22] Walker, Crime, Gender and Social Order, pp. 166-167; Walker, 'Women, theft and the world of stolen goods', pp. 91-93; Capp, When Gossips Meet, pp. 64-65.
[23] TNA ASSI 45/30/1/106 (1771), deposition in the matter of Ann Rogers.

mentioned Hester Norton were discovered only when she tried to sell the goods she had stolen to a man she did not know and who took it upon himself to investigate the crime.

Local magistrates generally took a passive role in the investigation or detection of general infractions of the criminal law, issuing warrants to local constables or bailiffs to search and arrest suspects at the request of a victim of crime. They took a more active role in the investigation and prosecution of indictable offences such as aggravated thefts, coining, forgery, treason and murder and were empowered to commit any suspected felons to gaol pending trial.[24] In the absence of an investigative police force, the thoroughness of a coroner's enquiry was crucial to any investigation into violent, accidental or suspicious death, although it depended on the willingness of the public to report suspicious deaths.[25] Coroners were authorised to summon an inquest jury of between twelve and twenty-four men who were required to examine the body of a deceased person with the coroner and a surgeon, following which the jury determined when, how and by what means that person came by his or her death.[26] The coroner's jury reviewed evidence of an unexplained death and gave their conclusions as to culpability, following which a coroner was authorised to commit any person identified as being concerned in an unlawful killing to prison pending his or her trial at the assizes.[27] The growing reliance on medical evidence in establishing the cause of death, not least of all in the investigation of a possible infanticide, is credited

[24] Styles, John (first published 1982) An eighteenth-century magistrate as detective: Samuel Lister of Little Horton, The Bradford Antiquity, volume 10, pp. 98-117; at www.bradfordhistorical.org.uk/antiquary/second/vol10/samlister.html, accessed 8 December 2011; King, Crime, Justice and Discretion, p. 17; Emsley, Clive (2010, fourth edition, first published 1987) Crime and Society in England, 1750-1900, London: Pearson Longman, pp. 192-195.

[25] Sharpe, James and J.R. Dickinson (2011) 'Coroners' Inquests in an English County, 1600-1800: a Preliminary Survey', Northern History, Leeds: Maney Publishing for the University of Leeds, vol. 48 (2), pp. 253-269, p. 259; Impey, John (1800) The office and duty of coroners, London, pp. 13, 16; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Public Wrongs, vol. 4, Oxford: Clarendon Press, p. 271; Jackson, Mark (1996) New-Born Child Murder: Women, illegitimacy and the courts in eighteenth-century England, Manchester and New York: Manchester University Press, pp. 142-143.

[26] Impey, The office and duty of coroners, pp. 8, 19, 56, 59; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of the Rights of Persons, vol. 1, Oxford: Clarendon Press, p. 335. The presence of a surgeon was necessary because until 1926 there was no requirement that a coroner should be medically trained; 16 & 17 Geo. V, c.59 (1926), Coroners (Amendment) Act.

[27] Impey, The office and duty of coroners, pp. 18-19, 60.

with raising the prominence of coroner's inquests during the second half of the eighteenth century.[28]

As authority within the family lay with the head of each household, it is not surprising to find that men generally took the lead in the arrest and prosecution of offenders on behalf of female family members. When Grace Sutcliffe was abducted and raped by Joseph Townend (her sister's brother-in-law) an arrest warrant was issued by a magistrate to the parish constables, bailiffs, the victim's father and her brother. They were ordered to apprehend Townend and his two accomplices (the victim's sister and her husband).[29] In the absence of a professional police force, a family's involvement in the search for a suspected felon was important because greater weight was attached to the testimony of a woman who instigated a search for the man accused of her rape.[30] When William Sutcliffe and his son went in pursuit of the three suspects, Sutcliffe was exercising his right to be involved in the protection of one daughter and the punishment of another.

The ancient act of hue and cry required local people to pursue those who committed a felony within the boundaries of the hundred in which they lived and allowed the victim the right to claim compensation for the harm suffered from the hundred.[31] By the end of the seventeenth century the use of the verbal hue and cry had to all intents and purposes been replaced by the written warrant issued by a magistrate and executed by a parish

[28] Farr, Samuel (1788) Elements of medical jurisprudence, or, A succinct and compendious description of such tokens in the human body as are requisite to determine the judgment of a coroner, and of courts of law, in cases of divorce, rape, murder, &c. : To which are added, directions for preserving the public health, Printed for T. Becket, p. 7.
[29] TNA ASSI 45/22/4/95-98A (1744), depositions, summons and affidavit in the matter of Jonathan Townend; TNA ASSI 41/3, Crown minutes, York, July 1744.
[30] Blackstone, Commentaries, vol. 4, p. 213.
[31] 13 Edw. I, s. 2, c.1 and 2 (1285) Statute of Westminster; 27 Eliz. I, c.13 (1584-5) An Act for the following of hue and cry; 9 Geo. I, c.22, s. 7 (1723) The Waltham Black Act; 8 Geo II, c.16, s. 11 (1735) An Act for the Amendment of the Law relating to Actions on the Statute of Hue and Cry; 7 & 8 Geo. IV, c.31 (1827) Remedies Against the Hundred (England), the Act abolished the liability of the hundred.

constable.[32] At the same time, legislation amending the rules on hue and cry introduced a requirement for a minimum of two witnesses be produced at trial to support any claim in felony and, thereafter, the use of recognizances to bind prosecution witnesses to attend gained greater significance.[33]

The office of the unpaid parish constable carried with it responsibility for undertaking arrests; for which he became liable to a fine when he failed to carry out his duties or faced retaliation when he did.[34] The office did not attract the respect offered to justices of the peace and, even though the appointment was only a temporary one, it would have been an unpopular task for a man who might farm his land one day and the next one be expected to enforce punitive legislation against his friends, family and neighbours. When assistant constable George Smith of Yeardon attempted to prefer a bill of indictment against Thomas Rowland (alleged to be the father of a bastard child), Smith was assaulted by Rowland as he attempted to carry out his duties. Smith was then bound by a magistrate to appear in court and give evidence against Rowland.[35] In such circumstances a constable was faced with the choice of turning a 'blind eye', for which he might be 'compensated', or forced into the centre of a local dispute in which he had no immediate interest, save for the fact of his office.

[32] King, Crime, Justice and Discretion, p. 62; Styles, 'An Eighteenth-Century Magistrate as Detective', pp. 98-117; Langbein; John H. (Winter 1983) Shaping the Eighteenth Century Criminal Trial, Yale: Trial: A View from the Ryder Sources, vol. 50 (1) Yale: Faculty Scholarship Series. Paper 546, http://digitalcommons.law.yale.edu/fss_papers/546, pp. 56-57.

[33] Rawlings, Philip (1999) Crime and power: a history of criminal justice: 1688-1998, Harlow: Longman, p. 16; 22 Geo. II, c.24 (1749), An Act for remedying inconveniences which may happen by Proceedings in Actions on the Statutes of Hue and Cry.

[34] Critchley, T.A. (1967) A History of Police in England and Wales, 900-1966, London: Constable, p.4-5, and 18-19; Curtis, T.A. (1977) 'Quarter Session Appearances and their Background: A Seventeenth-Century Regional Study', in Cockburn, J.S. (editor) Crime in England 1550-1800, London: Methuen & Co Ltd, pp. 135-154; Sharpe, J.A. (1999, first edition 1984) Crime in Early Modern England, 1550-1750, London and New York: Longman, p. 107.

[35] TNA ASSI 44/55, recognizance of William Walker and George Smith, 8 March 1740.

Constables had no authority to detain a suspect unless they had been issued with a written warrant, sworn before a magistrate, and setting out the terms under which it should be executed.[36] When members of the community acted spontaneously in seizing a suspected criminal the role of the constable was redundant but once a suspected criminal was apprehended it was customary for him or her to be brought before a magistrate. A rare case reported in the York Courant in 1740 demonstrates the procedure from detention of a suspect to committal for trial. When Elizabeth Jordan was suspected of having stolen three guineas from the house of Thomas Welburne she was taken into custody by the constable of Boynton and carried to an alehouse where several of the neighbours examined her about the offence. She was subsequently taken before a magistrate who had her committed to gaol pending her trial at the assizes.[37] The law at this time only required that within three days of an arrest a suspect should be examined before a magistrate and failure to do so would give grounds for an action for false imprisonment.[38]

Resources for the detection and arrest of suspects benefited from developments in the way information could be disseminated through handbills, broadsides and newspapers. For example, a bill of costs for bringing an indictment against Mary Lambert Powell for the theft in 1767, included 3s 6d for the production of 300 advertisements.[39] Newspapers became increasingly available during the course of the eighteenth century: they notified the community of forthcoming assizes; they carried reports on the conviction and sentencing decisions at the assizes; they printed accounts of riots; carried notices of rewards for stolen

[36] Herrup, Cynthia B. (1987 first edition) The Common Peace: Participation and the Criminal Law in Seventeenth-Century England, Cambridge: Cambridge University Press, p. 70; Blackstone, Commentaries, vol. 4, p. 287.
[37] York Courant, 18 March, 1740; TNA ASSI 45/21/4/ 35-36, (1740), depositions in the matter of Elizabeth Jordan.
[38] Baker, J.H. (1977) 'Criminal Courts and Procedure at Common Law 1550-1800', in Cockburn, (editor) Crime in England, pp. 15-48, p. 32; Hale, Sir Matthew (1736, first published 1680) *Historia placitorum coronae*: The History of the Pleas of the Crown, vol. 2, London, pp. 120-121.
[39] ERY Beverley, QSF/236/B/1, Midsummer 1767; ERY Beverley, QSF/242/D/2, letter of John Taylor to Isiok Broadley concerning charges of Taylor in the matter of Mary Lambert Powell.

goods; and reported on breaches of trading standards and sanctions imposed on offending tradespeople.[40]

The placing of notices for stolen goods in newspapers illustrates the reliance on amateurs in the enforcement of the criminal law. Reward notices for stolen horses feature prominently, while other notices called for the return of household goods: half a guinea for the return of a four year old mare;[41] a guinea for a nine year old gelding; [42] and £5 for information concerning the theft of various items of clothing and accessories.[43] One notice informed the residents of Leeds that: "Mary the wife of David Wilson did leave her husband without any reasonable cause" and warned that, "any one harbouring her would be punished by the husband with the full severity of the law".[44] Mary Wilson was the 'property' of her husband and he advertised for her return as another might advertise for the return of any other stolen goods. From the nature of the stolen items referred to in advertisements and handbills it seems likely that they were placed by men and aimed at men who bought and sold horses at the local horse fairs, or men and women who frequented the local market place, inns and other public places where stolen goods could be disposed of.[45]

From the middle of the eighteenth century a series of private prosecution associations were formed in order to meet the expenses of criminal investigations and prosecution for its members and offered rewards for information.[46] These associations did not evolve in a

[40] King, Crime, Justice and Discretion, p. 47; Styles, J. (1989) 'Print and Policing: Crime Advertising in Eighteenth-Century England', in Hay, D. and F. Snyder (eds) Policing and Prosecution in Britain 1750-1850, Oxford: Clarendon Press, pp. 55-111, p. 56.
[41] The Leeds Intelligencer, 30 July 1754.
[42] The Leeds Intelligencer, 14 January 1755.
[43] The Leeds Intelligencer, 12 August 1755.
[44] The Leeds Intelligencer, 19 August 1755.
[45] King, Crime, Justice and Discretion, pp. 57-61.
[46] Sutton, Jim (May, 2004) 'Protecting Privilege and Property: Associations for the Prosecutions of Felons', Local Historian, vol. 34 (2), pp. 89-103; King, Crime, Justice and Discretion, p. 47; Styles, Print and Policing, pp. 55-111, p. 56; Styles, John (1983) 'Sir John Fielding and the Problem of Criminal Investigation

uniform way but began with parish based associations to protect the rights of game keepers, those concerned in the horse trade and the emerging manufacturing industries. Depending on the nature of the association, the cost of prosecuting a felon might be defrayed by the parish vestry or by individual subscribers.[47] Whatever their common purpose, prosecution associations were generally formed by and for the benefit of their members, that is, "those with property protecting themselves against those without property".[48] The associations were not necessarily 'all male preserves' and women might be represented either as a tradesperson or farmer in her own right or as successor to a dead husband's membership.[49] By the late eighteenth and early nineteenth centuries there were active associations in a number of towns in the West Riding and in the city of York.[50]

The introduction of the factory system allowed for the closer surveillance by employers of their workforce and when the worsted manufacturers in the West Riding area felt that various coining activities were having an adverse effect on trade they used their own industrial police to secure evidence against those involved in the illegal trade and employed local attorneys (solicitors) to undertake prosecutions on their behalf.[51] However,

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in Eighteenth-Century England', Transactions of the Royal Historical Society, Fifth Series, vol. 33, pp. 127-149.

[47] Sutton, 'Protecting Privilege and Property', pp. 89-103; King, Peter (1989) 'Prosecution Associations and their Impact in Eighteenth-Century Essex', in D. Hay & F. Snyder, Policing and Prosecution in Britain 1750-1850, Oxford: Clarendon Press, pp. 171-207, p. 173 n.8, in which King estimates that there may have been 4,000 associations, though not all existing at the same time.

[48] Godfrey, Barry S., and Paul Lawrence, (2005) Crime and Justice, 1750-1950, Devon: Willan Publishing, p. 34.

[49] Sutton, 'Protecting Privilege and Property', pp. 89-103, pp. 96-95, in which Sutton' estimated that women might account for up to 20 per cent of the membership in some associations.

[50] ERY Beverley, DDBC/21/19, Articles of Beverley Association for the Prosecution of Felons, 8 March 1790. The ERY online catalogue includes numerous references for the articles and accounts of similar associations in the East Riding. There is evidence of a forerunner to prosecution associations in South Yorkshire as early as 1737 when one hundred parishioners, including five women, agreed to contribute to the costs of a prosecution, referred to in, Godfrey and Lawrence, Crime and Justice, p. 33. Godfrey advises that the source for this reference was found in an unpublished Ph.D. thesis: Soderlund, R. (1992) 'Law, crime and labour in the worsted industry of the West Riding of Yorkshire, 1750-1850', University of Maryland.

[51] Styles, J. (1980) 'Our traitorous money makers: the Yorkshire coiners and the law, 1760-83', in Brewer and Styles (editors) An ungovernable people: the English and their law in the seventeenth and eighteenth centuries, London: Hutchinson, pp. 172-249, p. 243; Emsley, Clive (1999, second edition, first published 1984) Crime in Early Modern England, 1550-1750, London and New York: Longman, pp. 199-200; Godfrey and Lawrence, Crime and Justice, pp. 150-165; Miles, M. (1984) ' "Eminent Practitioners": The New Visage of Country Attorneys c.1750-1800', G. R. Rubin and D. Sugarman (editors), Law Economy and Society,

it is likely that one unintended consequence of the work of prosecution associations was that their existence operated to delay a government review of the system of policing the country.[52] Only the wealthier organisations would have been able to afford to pursue a prosecution, whereas members of the less well funded associations may have been satisfied with the restitution of their property, otherwise known as 'compounding'.[53]

Such was the importance attached to the rights to property and the protection of those rights, that compounding a felony was proscribed in law. A victim of theft who failed to prosecute the crime might face prosecution, if it could be shown that he or she had compounded the felony by reaching a private settlement through the restitution of goods and/or other compensation.[54] In his survey of Staffordshire, Sutton suggested that few associations advocated compounding and most supported the vigorous prosecution of felons as a warning to others.[55] Nevertheless, resolution through restitution was likely to be of particular importance in cases of theft when the victim had strong emotional links with the property stolen, as was often the case in horse theft, or when the theft involved a high proportion of the victim's wealth.[56] Few references to compounding a felony can be found in the record books for Yorkshire, however, when John Clarkson was accused of that offence the grand jury of Wakefield rejected the bill against him, perhaps indicating that they did not regard his action as truly criminal, although at least one member of the community had been sufficiently incensed to lay the initial bill of complaint.[57]

1750-1914: Essays in the History of English Law, Abingdon: Professional Books Ltd, pp. 470-503, p. 480; WRY Calderdale HAS:1400 (463)/20 Statement of Thomas Sayer, 10 November 1769 in the matter of the Cragg Vale Coiners Archives Department, Howarth papers, HAS 8, folio 57.

[52] The textile manufacturers of Yorkshire were instrumental in the persuading Parliament to pass the Worsted Acts of 1777, which established an Inspectorate to police workplace theft; 17 Geo. III, c.35 (1777) The Worsted Acts; Godfrey and Lawrence, Crime and Justice, p. 35.

[53] See glossary; Godfrey and Lawrence, Crime and Justice, p. 34; Beattie, J.M. (2002, first published 1986) Crime and the Courts in England 1660-1800, Oxford: Oxford University Press, p. 50.

[54] Blackstone, Commentaries, vol. 4, p. 356.

[55] Sutton, 'Protecting Privilege and Property', pp. 89-103, p. 96.

[56] King, Crime, Justice and Discretion, p. 23.

[57] WRY Wakefield, QS4/29 210-215, 4 February 1742.

From the late seventeenth century, parliament enacted a series of statutes that offered rewards for the prosecution of felons ('blood money') which were used as an inducement to persuade accomplices to give evidence for the prosecution (or turn 'king's evidence').[58] Rewards of £40 were available to cover the costs of apprehending and convicting prisoners indicted for highway robbery and burglary and rewards of £10 could be paid following convictions for coining and theft of livestock.[59] Records of payments to various sheriffs provide evidence of the active part played by local officials in the capture and detention of suspected felons. The rewards issued were not necessarily retained by the sheriffs and a trial judge could give directions on the allocation of a reward between the prosecutor, witnesses, accomplices and 'thief catchers'.[60] For example, when Sir George Cooke, sheriff for the County of York, was awarded £80 for the arrest of Thomas Hadfield for a highway robbery and Naomi Hollings for a burglary, the records show that Cooke in turn paid the monies received to the victims of those crimes (probably in their capacity as prosecutors) and it is likely that the other rewards recovered were similarly paid to the prosecutors and their witnesses.[61]

While the system of rewards assisted in the capture of suspected felons, the use of rewards as an inducement to give evidence against a suspect was open to abuse and received much criticism for encouraging the business of 'thief-taking' and malicious prosecutions. Sir Matthew Hale doubted the credibility of the evidence given by a witness

[58] 4 & 5 Wm. & M., c.8 s.2 (1692): An Act for encouraging the apprehending of Highway Men; 10 and 11 Wm. III, c.23, s. 2 (1699): An Act to take away clergy from some offenders and to bring others to punishment, allowed for the payment of rewards for the capture of capital offenders; Langbein, John H. (2005, first published 2003) The Origins of Adversary Criminal Trial, Oxford: Oxford University Press, pp. 150-151; Radzinowicz, L. (1987, first published 1956) A History of English Criminal Law and its' Administration from 1750: The Enforcement of the Law, vol. 2, London: Stevens & Sons Ltd, pp. 40-45; Beattie, Crime and the Courts, pp. 50-59.

[59] Langbein, Origins of Adversary Criminal Trial, p. 148; Landau, Norma (Autumn, 1999) 'Indictment for Fun and Profit: A Prosecutor's Reward at Eighteenth-Century Quarter Sessions', Law and History Review, vol. 17 (3), pp. 507-536, p. 507.

[60] King, Crime, Justice and Discretion, p. 48.

[61] Shaw, William A. (editor) (1901) Calendar of Treasury Books and Papers, 1739-1741, vol. 4, London: HMSO, p. 172, entry 31 July 1739; TNA E 403/3107/40.

who benefited from the inducement of financial reward or a pardon for turning king's evidence, because it "disables his testimony".[62] Nonetheless, State Papers for 1754 include a letter from John White, a convict who returned early from transportation, offering himself as an informant against other criminals in Yorkshire in exchange for a pardon.[63] "I mean by proper Encouragement to come to you and give my Information against the most noted of the aforesaid Kind of Persons in England which I shall Cappitaly Convict of Felony to the Number of soe much as will ease the nation perhaps in my days".[64] The fact that White believed that his false testimony was a bargaining tool to freedom provides evidence of the widespread use of 'thief-takers'.

Some historians maintain that the intended benefit of the reward system was thwarted by the likelihood that evidence produced by these means would have worked in favour of the accused.[65] While records examined for this thesis provides evidence that men and women were frequently prepared to offer evidence against each other, and that juries were prepared to convict on the basis of accomplice evidence, there are too few examples of rewards being paid to informants in Yorkshire to allow a gendered analysis of the use of rewards.[66] The few examples located indicate that rewards were more often offered for the more serious crimes such as highway robbery, horse theft and burglary, which in turn were crimes more frequently committed by men, against the property of other men.

For the most serious offences, the government, local authorities and private individuals occasionally offered rewards that were significantly higher than the £40 limit provided by statute. For example, several rewards of £200 and £50 were paid to those who

[62] Hale, History of the Pleas of the Crown, vol. 2, p. 280.
[63] TNA SP 36/127 f. 134, papers and letters, 2 April 1754.
[64] TNA SP 36/127 f. 134, papers and letters, 2 April 1754.
[65] Langbein, Origins of Adversary Criminal Trial, pp. 150-151; King, Crime, Justice and Discretion, p. 48.
[66] See pp. 96, 136.

attended the sessions at York to give evidence of their apprehending Dick Turpin.[67] Because of doubts about the credibility of evidence given for reward, a Royal Proclamation in the mid-eighteenth century denounced perjury by prosecutors who were after rewards, as they were perceived to be responsible for a general reluctance of juries to convict.[68] Nevertheless, the reward system continued to be applied throughout the century, although permission was required from the Secretary of State before an advertisement could be published which offered a financial reward above the statutory limits.[69]

The passing of time after a crime was committed did not necessarily mean that members of a community were any less concerned with bringing a suspect to justice. Although Daniel Clarke was murdered in 1744, the two men held responsible were not captured or brought to trial until 1759.[70] Clarke had been involved in a financial scam which involved taking money from his neighbours in association with the two men who were later held responsible for his murder. Eugene Aram and Richard Houseman were not immediately suspected of his murder but fourteen years later, when Aram was living in London and visiting "a lady of pleasure" kept by "a gentleman of L…ds" (presumably Leeds) he was recognised as a person wanted in connection with the disappearance of Clarke. The name of the witness was omitted from the record of proceedings on the order of the trial judge to protect the 'gentleman's' identity.[71] It would seem that the name of his

[67] Shaw, Calendar of Treasury Books, p.43, entry 7 August 1739, concerning a petition to the Treasury from Richard Creasy and others to pay several rewards; Anon., York Castle Museum: Trial of Richard Turpin/ John Palmer, 7 April 1739, http://www.yorkcastleprison.org.uk/family-history/condemned/Creasy, accessed 10 July 2012.
[68] Radzinowicz, A History of English Criminal Law, vol. 2, pp. 326-332; Langbein, Origins of Adversary Criminal Trial, pp. 152-158; Cornish and Clark, Law and Society, p. 553; Paley, Ruth 'Thieftakers in London in the Age of the McDaniel Gang, c.1745-1754, in Hay, D. & F. Snyder (eds) (1989) Policing and Prosecution in Britain 1750-1850, Oxford: Clarendon Press, pp. 301-341; Hostettler, J., and R. Braby (2010) Sir William Garrow, Hampshire: Waterside Press, p. 31.
[69] TNA SP36/128, ff. 146-147, letter of Sir Henry Ibbetson, Leeds, 19 October 1754 on behalf of William Marshall, requesting permissions to publish a reward notice providing for the payment of an additional sum of £20 on top of the statutory £40 reward.
[70] Anon., (c. 1759) The Full and Authentic Account of the Murder of Daniel Clarke, York, Eighteenth-Century Documents On-line.
[71] Anon., Murder of Daniel Clarke, p. 39.

mistress was also withheld to protect the 'gentleman' rather than the woman, although the broadside reporter, if not the judge, could not resist referring to the woman as 'a lady of pleasure' in order to associate Aram with a loose living woman. The irony of the blatant exercise of double standards applied to the 'gentleman' witness and the murder suspect who shared the same female company appears to have been lost on the judge and/or the reporter.

Aram avoided arrest at that time by moving from London to Norfolk. However, when Clarke's body was discovered, Houseman and Aram were identified as suspects for his murder. Houseman was arrested and a warrant issued for the arrest of Aram who was traced to Lynn in Norfolk and brought back to York Castle. This case illustrates a number of matters relating to the pre-trial process. The suspect was recognized by a person who was prepared to make enquiries to identify him. Neither time nor space deterred the search for the suspects and, despite attempts to avoid detection, the warrant for the arrest of one suspect was extended so that he could be detained in another county. A passing association with an immoral woman who had nothing to do with the murder was later used to blacken the defendant's character. Finally, the co-defendant was able to benefit from the immunity available to offenders who impeached their accomplices and was acquitted after giving evidence for the prosecution.[72]

Negotiation and mediation

Once a suspect was identified, the victim was able to exercise discretionary powers in the resolution of the crime committed against him or her: deciding whether to take an active role in pursuing a prosecution, to exercise mercy by negotiating a private settlement, or remain passive and fail to respond to the offence. Friends and neighbours often acted as

[72] Anon., Murder of Daniel Clarke, p. 48.

mediators within local networks and if a victim of crime failed to report the offence nothing was done to prompt the judiciary to respond,[73] although the most serious crimes could be prosecuted by central or local government. When Michael Smith was suspected of having murdered his wife Mary Honeyman, a neighbour, reported that following a previous assault she had acted as an intermediary between the couple, persuading his wife to return home in exchange for the husband's promise that he would stop beating her.[74] In such circumstances, the social expectation that a wife would remain with her husband was matched by an acceptance that married women were subject to the exercise of 'reasonable' chastisement by their husbands.[75] An early publication on 'women and the law' (printed in 1732) confirmed the right of lawful chastisement by a husband of his wife, although it distinguished between 'beating' and 'chastisement':

> And though our Law makes Woman subject to the Husband, yet he may not beat her, but she may pray the Peace against him; and he shall find surety that he shall neither do nor procure to be done, any Bodily Damage, otherwise than appertains to the Offence of a Husband, and for lawful chastisement.[76]

The relative absence of allegations of assault by a spouse in the court records is not unexpected, although, a few husbands and the occasional wife were bound to 'keep the peace' towards their partners.[77]

Recourse to the judicial process was unnecessary if the victims of crime were able to deal with offenders directly through physical retribution (which carried with it risks of its

[73] Capp, When Gossips Meet, p. 185.
[74] TNA ASSI 45/31/1/282 (1773), information of Mary Honeyman.
[75] Hill, Bridget (1984) Eighteenth Century Women: An Anthology, London: George Allen & Unwin (publishers) Ltd, pp. 137, 143; Defoe, Daniel (1724) The Great Law of Subordination consider'd, London, pp. 6-7. The relationship between 'reasonable chastisement' and domestic violence is considered further in this thesis in respect of homicides and assaults, see pp. 179, 217-218.
[76] Anon. (1732) A Treatise of Feme Coverts: or the Lady's Law, London, p. 81.
[77] See pp. 64.

own) or some private arrangement.[78] Attorneys and counsellors (barristers) played an important part in the private settlement of disputes, as illustrated in Miles's study of attorneys who served the West Riding of Yorkshire.[79] He found that the type of litigation that concerned attorneys in the area around Halifax and Bradford reflected the mercantile society of the West Riding during the second half of the eighteenth century. Although much of their work concerned civil matters (conveyances, bankruptcy and wills) both men acted as arbitrators in disputes over debt, trespass, assault and the like amongst neighbours. The purpose of arbitration was generally to reach an amicable settlement by way of compensation or apology and, if that was unsuccessful, both parties might agree to refer the matter for independent arbitration by their peer, in much the same way as a court, and make awards.[80] If arbitration failed, a dispute could be referred to a mutually acceptable umpire by those who preferred compromise over litigation.[81] Miles pointed to the role of attorneys, counsellors, esquires and gentlemen as arbitrators as providing evidence of "paternal responsibility in the community".[82] He also found evidence of class bias, when 'gentlemen' acted as judges of other 'gentlemen', while merchants, clothiers and yeoman acted as arbitrators in disputes between men concerned in similar trades, where adherence to the rules of social protocol may have been intended to avoid friction over the outcome. By the nature of the cases referred for arbitration, it is no surprise to find that the majority of one attorney's clients were men drawn from the upper and middling classes (about 67 per cent) while women made up less than 8 per cent of his client base.[83]

[78] King, Crime, Justice and Discretion, pp. 17-35; Howard, 'Investigating responses to theft', pp. 409-430, p. 414; Morgan, Gwenda and Peter Rushton (2003) 'The magistrate, the community and the maintenance of an orderly society in eighteenth century England', in Historical Research, vol. 76, London: Blackwell Publishing, pp. 54-77, pp. 57-58, 74.
[79] Miles, 'Eminent Practitioners'.
[80] Miles, 'Eminent Practitioners', p. 495.
[81] Miles, 'Eminent Practitioners', pp. 495-496.
[82] Miles, 'Eminent Practitioners', p. 495-497.
[83] Miles, 'Eminent Practitioners', p. 500-501.

It is possible that village communities, neighbours or family members argued for an alternative resolution to a dispute where the perpetrator was a member of the same community. While outsiders and undesirables may have been easy targets for summary justice by members of the local community, the number of 'strangers' in the emerging urban and industrial environments made it more likely that petty crimes were pursued through judicial channels.[84]

The single justice

Once apprehended, a suspect could be brought before a magistrate, either in his own home or at the court house. A single justice had some statutory powers to hear and determine offences and punish the offender on his own judgement, either following the confession of the offender or on the examination and proof of witnesses.[85] It is not possible to define accurately the extent of the powers of the solitary magistrate as they inherited powers which predated the creation of justices of the peace and allowed them to execute any statute, even though no express powers were given to them in the same statute.[86] Sharpe identified over twenty separate administrative and judicial functions of the solitary justice, including the power to examine suspects and witnesses in cases of felony, take recognizances, and commit suspects and vagabonds to prison.[87] Although it lay beyond his powers to "hang a man for a trespass, [or] fine him for a felony", he was, for example,

[84] Godfrey and Lawrence, Crime and Justice, p. 31, Beattie, Crime and the Courts, p. 135; Underdown, David (1985) Revel, Riot and Rebellion: Popular Politics and Culture in England, 1603-1660, Oxford: Oxford University Press, p. 16; Howard, 'Investigating responses to theft', p. 425.

[85] Dalton, Michael (1705) The country justice: containing the practice of the justices of the peace out of their sessions, London: William Rawlins and Samuel Roycroft, pp. 8, 20-21.

[86] 13 Edw. I (1285) Statute of Westminster, provided that each district or hundred was responsible for unsolved crimes committed within its boundaries; 1 Edw. III (1327) Justice of the Peace Act, created the post of justice of the peace, building on the earlier role of conservators of the peace; The Commission of the Peace, reformed during the reign of Elizabeth I, set out the powers of justices of the peace; Dalton, The country justice, p. 20.

[87] Sharpe, Crime in Early Modern England,, pp. 28-29; and see Landau, Norma (1984) The Justices of the Peace, 1679-1760, California, London:University of California Press, chapter 6, 'The Single Justice: Varieties of Paternalism', pp. 173-208, and chapter 7, 'Petty Sessions' pp. 209-239.

authorised to fine or whip a person for trespass.[88] Few of the statutes which conferred powers on a single justice specified any procedures to be followed, although, they were supposed to report any 'on the spot' conviction resulting in a fine, pillory or imprisonment to the following quarter sessions. Unfortunately, there is no evidence of customary record keeping of these summary proceedings or of reporting to the quarter sessions in Yorkshire.[89]

The powers of justices increased when they sat in pairs ('petty sessions') and by the eighteenth century they determined a wide range of petty offences, without a jury, while sitting in petty sessions.[90] They were empowered *inter alia:* to take a recognizance from an alehouse keeper to keep the peace; to imprison a servant for up to one year for an assault on a master; to punish those who embezzled cloth; to compel women to work and for such wages as they thought fit; to set the local tax for relief of the poor; and fine those who used unlawful weights and measure in the market place.[91] Two justices were required to enquire into all offences within the geographical jurisdiction; to take and view all indictments; to grant recognizances and cause offenders to be brought to trial; to hear and try all offences on indictments taken before them; to give judgement and pass sentence according to the statutes but not to award compensation, "other than by persuasion".[92]

While there are no formal records of the work of the single justice or petty sessions, the notebook of the Reverend Edmund Tew, a magistrate for neighbouring Durham between 1750 and 1770, indicates that nearly 50 per cent of his time was taken up with

[88] Dalton, The country justice, p. 22.
[89] Skyrme, Sir Thomas (1991) History of the justice of the peace, vol. 2, England to 1689-1989, Chichester: Barry Rose Publications, pp. 62-63.
[90] Dickinson, William esq., (1820, second edition) A practical guide to the quarter sessions and other sessions of the peace, adapted to the use of young magistrates, and professional gentlemen, at the commencement of their practice, London: J. And W.T. Clarke, pp. 2-3; Blackstone, Commentaries, vol. 4, p. 280; Skyrme, History of the justice of the peace, vol. 2, p. 65.
[91] Dalton, The country justice, p. 23.
[92] Dalton, The country justice, p. 21.

resolving private grievances that might otherwise result in court proceedings and that 40 per cent of the complainants were female.[93] In matters of trespass to the person or property, victims may have been more inclined to accept informal mediation offered by a magistrate, rather than pursue formal proceedings against an accused.[94] By these means, a significant number of accusations would have been resolved directly by the local magistrate; thus weeding out a range of minor complaints and petty crimes from the formal judicial process.[95] Unrepresented and innocent defendants may have been persuaded (or intimidated) to reach an early compromise with a complainant, rather than run the risk of a criminal conviction at quarter or assize sessions which attracted an additional fine, corporal punishment or imprisonment.

Laying a formal complaint ('information') before a magistrate of an offence committed by a named suspect was the usual method of instituting criminal proceedings. At this stage the magistrate's role was that of an investigating officer, he therefore took written testimonies (depositions) from the victim, witnesses and the accused.[96] Following his examination of any witnesses, a magistrate determined whether formal proceedings were necessary to punish the offender. To that extent, the accuser, legal clerk and justices exercised considerable discretionary powers in framing the charges set out in the indictment, as the offence alleged determined the punishment the defendant could expect to receive, if convicted.[97] Theft of goods valued at1s. or less was classified as petty larceny

[93] Morgan and Rushton, 'The magistrate, the community', p. 71. Tew's jurisdiction fell within the Palatinate Court of Durham and there may be some variations in the powers exercised in Yorkshire and Durham.
[94] Statute of Northampton 2 Edw. III, c.3 (1328) empowered justices of the peace to hear and determine complaints in trespass. Over time, for the purposes of determining the powers of the magistracy, the term trespass was loosely defined and came to include not only trespass to property, riots and affrays but also trespass to the person in the form of an assault.
[95] Cockburn, J.S. (1985) Calendar of Assize Records: Home Circuit Indictments Elizabeth I and James I, Introduction, London: HMSO, p. 91; King, Crime, Justice and Discretion, p. 22; see Colquhoun, Patrick (1796, second edition) A Treatise on the Police of the Metropolis, London: printed by H. Fry, for C. Dilly, in the Poultry n, pp. 231-232.
[96] Baker, 'Criminal Courts and Procedure', p. 16.
[97] Cornish and Clark, Law and Society, p. 562; Baker, 'Criminal Courts and Procedure', pp.18-20; Howard, 'Investigating responses to theft', p. 414; King, Crime, Justice and Discretion, pp. 86-89.

and (following conviction) might result in a public whipping or branding, while a valuation in excess of 1s. made the offence a grand larceny which attracted a capital sentence.[98] Similarly, a conviction for manslaughter could be punished by branding, while the mandatory sentence for murder was hanging.

It is possible that the social status of the victim of a crime influenced the extent of enquiries undertaken of witnesses to certain crimes.[99] When the Mary Ormand committed burglary from the house of Sir William Lowther, the investigation carried out by a magistrate ran to almost thirty pages of depositions and examinations.[100] Officers of the state were also well served if attacked during the exercise of their duties. When James Broadbent and his associates were charged with the murder of an excise officer, depositions taken in the enquiry ran over twenty pages.[101] Although such cases illustrate the potential relevance of the social status of victims, it would be inaccurate to conclude that justices of peace were any less thorough in investigating the complaints of ordinary subjects of the crown. This is particularly evident when allegations were made against adults accused of the physical and sexual abuse of children and young people, whatever their social background. The quarter session indictment of John and Hannah Walker for a violent assault on Elizabeth Owens (their thirteen year old domestic servant) ran to over six pages, detailing fifty days of systematic abuse.[102] No mention is made of the girl's relatives and it is possible that she had been placed with the couple by the parish on terms of an apprenticeship. Regardless of her circumstances, the impetus for the investigation and prosecution appear to have come from the parish and justices of the peace who acted on

[98] East, Sir Edward Hyde (1803) A Treatise of the Pleas of the Crown, vol. 2, London: J Butterworth, pp. 545, 740; Beattie, Crime and the Courts, p. 485.
[99] King, Crime, Justice and Discretion, pp. 107-109.
[100] TNA ASSI 45/20/1/63-94, (1735) depositions in the case of Mary Ormand. Sir William Lowther bart., was the member of parliament for Pontefract between 1729 and 1741.
[101] TNA ASSI 45/29/3/183-209A, (1770), depositions in the matter of Robert Thomas, James Broadbent, William Folds, Matthew Normanton and Thomas Clayton.
[102] WRY Rotherham, QS4/37 182-191, August 1771.

behalf of the community to punish anti-social behaviour.

It is generally accepted that the powers extended to the solitary justice and those sitting at petty sessions allowed for the "vast majority" of disputes to be settled under their summary powers, leaving the only more serious offences to be determined by trial at assize or quarter sessions.[103] Smith and Landau differ in their interpretation of the significance of summary proceedings: Smith argued that summary proceedings placed defendants at a procedural disadvantage (compared with proceedings in the higher courts), largely because they granted the power to pass judgement while dispensing with lawyers and the rules of evidence.[104] In contrast, Landau' critique was couched in terms of the abuse of powers by local magistrates which operated to the disadvantages of both the accused and accuser, although she acknowledged the limitations of surviving sources in undertaking a full analysis of pre-trial proceedings in support of her claims, which are more scarce for the period pre-1780.[105]

Magistrates were bound (in theory) to commit an accused felon to gaol pending trial and the length of time spent on remand depended on whether the complaint was referred to the following quarter sessions or the biannual assizes.[106] In such circumstances, it is possible that many victims took advantage of the remand system to punish an accused man or woman with a short spell in gaol or the house of correction, without necessarily going to the lengths of pursuing the prosecution by appearing for the trial. Even a short spell in the court's cells awaiting trial might serve as sufficient warning of worse to come to first time offenders. John Howard's report on the prisons of England and Wales includes a

[103] King, Crime, Justice and Discretion, p. 117; Landau, The Justices of the Peace, pp. 2068, 221-222; Sharpe, Crime in Early Modern England, pp. 40-41; Smith, Bruce (Spring, 2005) 'Did the Presumption of Innocence Exist in Summary Proceedings?', Law and History Review, vol. 23, No. 1, pp. 181-199.
[104] Smith, 'Did the Presumption of Innocence Exist', p.198.
[105] Landau, Norma (Spring, 2005) 'Summary Conviction and the development of the Penal Law', Law and History Review, vol. 23, No. 1, pp. 173-189, p. 188.
[106] Dickinson, A practical guide, pp. 88-89.

description of the town gaol in Sheffield, of "two small rooms, the largest only about eight feet square, and six high".[107] Quarter sessions were held in Sheffield on alternate October sittings and the number of criminal cases recorded for each session during the periods immediately before Howard's inspection was: twenty-nine men and four women in October 1770, ten men in 1772, and eight men and three women in 1774.[108] Not all prisoners were necessarily held in gaol pending their trial, but even if only a few were held in each cell, the experience was likely to have been extremely distressing.

Function and use of recognizances

Justices of the peace were authorised to resolve disputes between quarrelsome neighbours by requiring that those involved were bound by recognizances to 'keep the peace' until they made an appearance at the quarter sessions, at which time they would generally be released from their obligations if no new complaints were made against them.[109] Responses to acts of violence were measured in terms of social hierarchy, individual means and contemporary attitudes to the nature of the offence.[110] Therefore, when John Umphelby, a gentleman, was accused of an assault by shooting at Francis Hunt, he was released from court on his recognisance of £500 to keep the peace and four additional sureties of £200 each.[111] In the later period surveyed, 105 cases have been identified from the Beverley quarter sessions where four women and 101 men appeared at various times on their recognizances and received orders to keep the peace (Table 1.1). The relative absence of orders against women to keep the peace may be explained in part because of an interpretation of the law that stated that a man might be released on his own 'surety for the peace' but doubted the ability of a married woman (*femme covert)* or a child

[107] Howard, John (1777) The State of the Prisons in England and Wales, Warrington: William Eyres, p. 412, report of inspection 28 October 1776.
[108] Howard, The State of the Prisons, p. 412, report of inspection 28 October 1776.
[109] Landau, The justices of the peace, pp. 185-186.
[110] See p. 217.
[111] TNA ASSI 41/6, ASSI 44/85, York county, March 1770.

under the age of twenty-one to be legally bound without additional securities provided by their friends or families "for they are incapable of engaging themselves to answer any debt".[112]

Table 1.1: Orders to keep the peace: East Riding of Yorkshire

Quarter sessions, Beverley	**1765-1775**	**%**
Orders to keep the peace:	**105**	
M [113]	101	**96.2**
F [114]	4	**3.8**
		100.0
Men and their victims	**101**	
A man	55	**54.5**
Spouse	9	**8.9**
Other women	33	**32.7**
Unknown	4	**4.0**
		100.0
Women and their victims	**4**	
Other men	1	**25.0**
Spouse	1	**25.0**
Woman	2	**50.0**
Unknown	0	**0.0**
		100.0

Just over half the orders for men to keep the peace in Yorkshire arose out of an incident involving another man (Table 1.1). Of the female complainants of male 'nuisances', 32.7 per cent were wives of other men but without more information it is difficult to assess how many complaints arose out of allegations of unwarranted sexual attention. Complaints by wives against their husbands represent only 8.9 per cent of all the

[112] Blackstone, Commentaries, vol. 4, Oxford: Clarendon Press, p. 251; and see, Burn, Richard (1755) Justice of the Peace and Parish Officer, vol. 2, London, p. 431.
[113] M = Male in tables throughout this thesis.
[114] F = Female in tables throughout this thesis.

orders against men but they provide rare evidence that some justices of the peace were prepared to take some steps to protect a wife from a violent husband, although the initiative lay with the abused wife and justices' powers were limited. Because of guidance that additional sureties should be taken before a woman could be bound to keep the peace, it is possible that women who caused a nuisance were dealt with by being 'handed over' to their father, husband or master without any further orders, which would explain why very few orders are found for women in Yorkshire to keep the peace. In the one exceptional case, in which a husband felt strongly enough to make a public complaint against his wife, the justice of peace took recognizances from another man in the community (possibly a relative of the complainant's wife) requiring Diana Foster to be of good behaviour and keep the peace towards her husband.[115] In such cases the resort to patriarchal authority had clearly broken down.

It is difficult to estimate the extent to which these orders were policed by the community, although, a requirement for additional sureties obliged members of the family or local community to monitor behaviour. Alternatively, reciprocal orders allowed for self-policing between argumentative neighbours: when John Askam, a gentleman, farmer of Wilberfoss in the East Riding received an order to keep the peace towards Joseph Smith, a farmer from the same village, a reciprocal order required Smith to keep the peace towards Askam.[116] Otherwise, when the behaviour of any individual became too disruptive, a magistrate had authority to commit him or her to the house of correction until the following quarter sessions.

A victim of crime could bring a halt to proceedings at any time before a magistrate committed his or her claim for trial at the assize or quarter sessions. However, where there

[115] ERY Beverley, QSF/246/C/8, Christmas 1769, recognizance of Henry Markham of Wressle.
[116] ERY Beverley, QSF/242/C/9-10, Christmas 1768.

was sufficient evidence of a felony a magistrate had no choice but to order the matter to be tried at the assize or quarter sessions. In other circumstances, he had to decide whether to grant or refuse bail to a defendant, direct examining justices to gather evidence for trial and decide whether to bind witnesses by recognizances to prosecute and give evidence.[117] The finding of the coroner's jury provided the substance of the indictment of those suspected of murder and manslaughter at the assizes, where those cases might proceed to trial without the prior approval of a grand jury at assizes.[118] For that reason, coroners were also empowered to bind key witnesses, including examining surgeons, to attend the assizes.[119] Recognizances might be issued during the course of any proceedings where matters were adjourned to a later date but, for the sake of continuity, all forms of recognizances are considered in this chapter.

Various Acts of Parliament attempted to curb frivolous prosecutions by providing that no criminal prosecutions were to be filed in court without an express order from the court or without taking a recognizance from the informant for an effectual prosecution.[120] There were three types of recognizance relevant to the trial process: a recognizance to prosecute (usually issued to the victim of the alleged crime); a recognizance to appear (issued to a man or woman accused of a non-felonious offence) and witnesses recognizances (issued to prosecution witnesses). The failure to take a recognizance from a prosecutor or prosecution

[117] The Bail and Committal Acts of 1554-1556 (together known as the 'Marian Acts'): 1 &, 2 Ph. & M. c.13 (1554-55) the Bail Act required two justices of the peace to act simultaneously in granting bail; 2& 3 Ph. & M. c.10 (1555-1556), An Act to take the examination of prisoners suspected of manslaughter or felony, required two justices to take written examinations of the accused and informations from the accusers, of sufficient facts and circumstances of the charge as was material to prove the felony before they refused bail and committed the accused to gaol, pending trial at the next gaol delivery. See Appendix A: Legal Advice on Taking a Recognizance.

[118] Beattie, Crime and the Courts, p. 80; Emsley, Clive, Tim Hitchcock and Robert Shoemaker, 'Crime and Justice - Trial Procedures', Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0) accessed 10 July 2012.

[119] 1 & 2 Ph. & M. c.13, s. 5 (1554-1555), on the authority to bind witnesses by recognizances. Some depositions taken before a coroner have survived in the assize records for the northern circuit in series TNA ASSI 45, where they were transferred in order that indictments could be drafted for the prosecution of suspects in murder and manslaughter.

[120] 4 Wm. & M. c.18 (1692), known as the 'Committal Act', enacted that a criminal information could not be filed without an express order given in open court and upon condition of costs.

witness did not mean that they could not appear at the trial but they could not be compelled to attend. In contrast, witnesses for the defence could not be bound or otherwise compelled to attend by the court but appeared only at the request of the defendant.

Failure to take the recognizance of an accused whose incentive to return to court was uncertain carried risks. When Jane Locock was accused of an assault on Thomas Harrison she was described as the wife of a man who lived over fifty miles away from the court. There was no automatic requirement for a recognizance to her to attend court for a misdemeanour, although she could have been bound by a recognizance to keep the peace until the following sessions, yet no such order was made. The response to enquiries following Locock's failure to appear at the following quarter sessions was that no one by that name was known at that address.[121] In such circumstances, justices of the peace were empowered to issue warrants to constables and headboroughs to arrest a defendant and commit him or her in gaol or the house of correction, pending trial.[122]

It was not always the case that the victim of a crime was bound to prosecute the accused, particularly when the victim was female and had a parent or husband to act on her behalf. Where the complaint related to a matter of homicide, a male member of the family or community might more commonly be bound to prosecute. Because of doubts concerning the capacity of married women and children to be bound by their own recognizance, the conditions attached to the recognizance of a woman to appear in court might vary according to whether she was married or single. When James Broadbent and others were indicted for their part in a coining operation in the county, male witnesses were

[121] WRY QS4/29/116, quarter sessions for Skipton, 15 July 1740.
[122] 8 Hen. VI c.10 (1429): Act for the processing of indictments and appeals; 10 Hen. VI c.6 (1431/2): Act for the processing of indictments and removal into the King's Bench. In order to procure a warrant to detain a defendant, the prosecutor had to produce an affidavit of the nature and circumstances of the case which justified a warrant being issued; Stubbs, W., G. Talmash (1749, second edition) The Crown Circuit Companion, London: J. Worrall, pp. 40-41; Burn, Richard (1755) Justice of the Peace and Parish Officer, vol. 1, London, p. 74.

bound in the sum of £40 each to secure their attendance while the married, female witness was bound to give evidence 'on pain of imprisonment' if she failed to attend.[123] Either her husband was unable to provide sufficient sureties on her behalf, or she was deemed more susceptible to intimidation or corruption. Although the same rules applied equally to men and women (in theory), the greater likelihood of a woman lacking financial independence made her more susceptible to an order requiring male sureties or the threat of imprisonment.

When Robert Waddington was accused of the rape of Ann Rawson (a spinster) a recognizance of £50 was issued for her to give evidence against Waddington, while William Rawson (probably her father) was ordered to enter into a recognizance for £25 to prosecute him.[124] However, when Jane Smith (a married woman) accused John Hallott of an attempted rape, George Smith (her husband) was ordered to enter into a recognizance of £40 on the condition that he and his wife appeared at the next assizes to prosecute Hallott.[125] In that respect, the justices differentiated between the relationships of husband and wife and father and daughter, by placing the daughter more firmly in the position as the property of the father, when she was only required to give evidence, whereas the married woman was named as co-prosecutor.

Even when women played a key role in the investigation of the crime and examination of the accused, the decision to bind a woman to prosecute depended on her financial independence. Therefore, when Elizabeth Frazier and Barbara Thompson were ordered to prosecute Ann Parcivall for infanticide, recognizances for their appearances were provided

[123] TNA ASSI 42/8; TNA ASSI 44/85, York county, March 1770.
[124] TNA ASSI 45/23/1/87 (1745), recognizance of Ann Rawson and William Rawson.
[125] TNA ASSI 45/20/1/33 (1734), recognizance of George Smith.

by Frazier's father and Thompson's husband.[126] When a female victim lacked any male support, the terms of her recognizance might be potentially more onerous because of her susceptibility to threats or intimidation to withdraw her complaint. Ann Knowles (a widow) was bound by a recognizance for £100 to prosecute two men and a woman for the theft of a large quantity of clothes and household items from her house.[127] Witness recognizances were taken from William Clark and his wife in the sum of £80, as they were said to have bought items of female clothing from one of the accused.[128] A third witness, Richard Winterburne was bound in the sum of £50 for his evidence against another of the accused, having bought an item of stolen clothing from her.[129] A fourth witness, Ralph Winterbottom, entered into a recognizance of £20 to give his evidence against all three defendants relating to his suspicions that they were the people who had committed the burglary. The fact that Knowles entered into a recognizance to prosecute in her own right reflected her status as a widow and a financially independent woman. The high value of the recognizance reflected her susceptibility as a woman to intimidation by one of the witnesses, who were themselves involved in the purchase of stolen goods. In contrast, the different bonds ordered in each witness recognizance reflected the role played by each individual in the events described and the likelihood of their wishing to avoid giving evidence, rather than any specific issues of gender.

It is possible that orders to prosecute were also used as a means of social control. When Joseph Coulle laid a complaint before justices in Beverley, accusing Thomas Reames of stealing money from him, Henry Clark and Matthew Malon, an innkeeper, were bound to prosecute Reames. If the theft took place on Malon's premises, the order for him to prosecute served as a warning about the consequences of keeping a potentially

[126] TNA ASSI 45/20/1/97, 99A (1735), recognizance for two female witnesses to prosecute Ann Parcivall for infanticide.
[127] TNA ASSI 44/55, recognizance of Ann Knowles, 10 March 1740.
[128] TNA ASSI 44/55, recognizance of William Clark and Ann Clark, 10 March 1740.
[129] TNA ASSI 44/55, recognizance of Richard Winterburne, 10 March 1740.

disorderly house, while dealing with the problem of the immediate offender.[130] Even so, decisions to bind a person by a recognizance to prosecute were not made solely on the basis of social status of the complainant. Despite his credentials, when Christopher Tancred J.P., laid a complaint against Mary Kettlewell for breaking into a chest and stealing money from inside it, he appeared before a fellow magistrate and was required to enter into a recognizance for £20 for his appearance to prefer his complaint at the following assizes.[131] Perhaps, because Tancred was a published author on the criminal justice system, his colleague felt obliged to apply the same rules to Tancred as he would to any other prosecutor.[132]

The rules for binding prosecutors have been criticized for having "transformed the role of the private accuser from option to obligation"[133] because of the condition that prosecutors would forfeit their recognizances if they failed to appear at the gaol delivery to give their evidence. Despite the condition, records surveyed for this thesis (and studies of other English regions) suggest that few magistrates insisted that a victim proceeded with a prosecution if he or she did not wish to do so.[134] In theory, if the failure of the prosecutor or prosecution witness to appear was due to illness or other good cause the case might be put over to a later date, even when that resulted in the longer detention of the accused.[135] However, if a circuit judge was unwilling to adjourn a trial, the absence of a key witness was likely to be fatal to the prosecution case. For those reasons, Coroner Robert Wood was fined £20 when he failed to appear at the assizes to give expert evidence as to the cause of

[130] ERY Beverley, QSF/119/C/16, Christmas 1737, Recognizance.
[131] TNA ASSI 45/20/1, 27 July 1735, recognizance of Christopher Tancred, esq.
[132] Tancred, Christopher (1727) An essay for a general regulation of the law, and the more easy and speedy advancement of justice, London: printed for Stephen Austen
[133] Langbein, John H. (1973) 'The Origins of Public Prosecution at Common Law' The American Journal of Legal History, vol. 17, pp. 313- 335, pp. 322-324; and see Langbein, John H. (1974) Prosecuting crime in the Renaissance: England, Germany, France, Cambridge, Massachusetts : Harvard University Press, pp. 5-125; Langbein, Origins of Adversary Criminal Trial, Oxford: Oxford University Press, pp. 40-47.
[134] King, Crime, Justice and Discretion, p. 104.
[135] Beattie, J.M. (1977) 'Crime and the Courts in Surrey 1736-1753', in J.S. Cockburn (ed), Crime in England 1550-1800, London: Methuen & Co Ltd, pp. 155-186, p. 162.

death at the trial of Judith Mann for the murder of her illegitimate baby, while Mann was acquitted for lack of evidence.[136]

An example of the recognizances for the appearance of defendants at the assizes for Yorkshire in March 1739 is set out in Appendix B, where the orders range from a sole recognizance of £20 to a recognizance for £100 with two sureties of £50 each for a range of capital offences. The orders do not appear to have been based on an assessment of the wealth of the individuals concerned as all defendants seem to have been drawn from the labouring classes. However, as with the binding of prosecutors and prosecution witnesses to attend court, there does appear to have been some gendered bias in the level of the bonds required of defendants when a single woman acting alone was subject to the highest bond.

Landau asserted that the discretionary authority of justices of the peace in issuing recognizances created a situation in which corrupt justices could abuse the system to threaten and intimidate witnesses.[137] She drew particular attention to criticisms made of 'trading justices' sitting in London during the eighteenth century, who were accused of a range of abuses, which included issuing recognizances for minor disputes then summarily settling the same matter before releasing the bond on payment of a fee.[138] Nevertheless, Robert Shoemaker argued that her 'stereotype' of the corrupt trading justice did not sit well with the evidence revealed from his examination of recognizances issued by justices in London and Middlesex and, even if some justices used their office for profit, that did not necessarily mean that the business they performed as mediators was not genuine.[139] Likewise, there is no immediate evidence to support Landau's proposition in the records

[136] TNA ASSI 41/3, Crown minutes, York; TNA ASSI 44/53 and 55, York county, March 1740.
[137] Landau, The Justices of the Peace, pp. 184-190; Landau, Norma (2002) Law, Crime and English Society, 1660-1830, Cambridge: Cambridge University Press, pp. 46-47.
[138] Landau, The Justices of the Peace, pp. 184-190; Landau, Law, Crime and English Society, pp. 46-47.
[139] Shoemaker, Prosecution and Punishment, pp. 229-130. See also King, Crime, Justice and Discretion, p. 109.

surveyed for Yorkshire; Landau, herself, acknowledged that these allegations are "impossible to prove" and that "no metropolitan justice was ever charged in court with creating crime".[140] There is clearly a complex story behind the grant or refusal of recognizances and it is an area that requires further examination.

Bail and committal procedures

Different issues became relevant when it came to the consideration of the grant or refusal of bail, where the alternative was imprisonment until the day of the trial. When George Bainton, a local attorney, was jointly accused with another man and woman of forgery, he was released on his recognizance of £200, with sureties of £100 from two other men.[141] Although standing surety and loaning money was something that the parish elite were expected to do, there is no evidence that either of his accomplices were offered the opportunity to find sureties for their return to court or that Bainton offered to stand surety for them. It is likely that Bainton's social standing played a greater part in influencing the committing justice's decision to grant bail, than the gender of the overlooked male and female accomplices.[142] Likewise, when in July 1765 Jane Henderson was accused of arson, Mary Dixon of the murder of her baby and Thomas Hutton of forgery, Henderson and Dixon were remanded in prison until the following assizes while Hutton was made subject to a subpoena for his attendance.[143] The remand of Henderson and Dixon was inevitable, given the nature of their offences, but forgery was also a felony for which Hutton should have been remanded in gaol. However, as Langbein observed, forgery was an offence of the literate, with the accused often coming from a higher social group than other common

[140] Landau, The Justices of the Peace, p. 189; Landau, Law, Crime and English Society, p. 47.
[141] TNA ASSI 45/22/1/18 (1741), recognizance of George Bainton.
[142] York Courant, 17 March 1741, George Bainton and his male accomplice were convicted and sentenced to death and the female accomplice was acquitted. Bainton 'flattered himself with the hopes of a reprieve to the very last moment', however it was his accomplice who was successful in martialling support for a petition for mercy, TNA SP 36/56 f. 38, 10 May 1740, W. Osbaldeston J.P., to Lord Newcastle enclosing a petition on behalf of John Gilley.
[143] All three appeared at the same assizes for the county of York in July 1765: TNA ASSI 41/5, York County, July 1765; TNA E 389/243 f.604; TNA ASSI 43/8, fee books from the Northern Circuit.

criminals.[144] Hutton was in fact a school master and allowing him his freedom may be greater evidence of his access to legal advice, an ability to pay any legal costs and his appearance as a comparatively 'sympathetic' defendant, rather than providing evidence of male/female discrimination. For those on the lower end of the social scale, not even pregnancy or mental illness were automatic grounds on which a magistrate might veer from the statutory provisions in ordering a committal for gaol, as demonstrated by a note found in the quarter session records for Beverley: "I send you two women one of them big with child & troubled with fits so if you should let her have the use of a bed for a while I will set you a reasonable allowance for it".[145] These cases appear to provide not so much evidence of gendered discretion but the influence of money and social status.

There was some statutory protection against the unlawful detention of suspects under the Act of *Habeas Corpus,* which prevented the unauthorised detention of a person in custody or the unwarranted failure to put a person on trial within one year, failing which a *nolle prosequi* (notice of discontinuance) would be entered.[146] Nonetheless, an accused person may have spent up to twelve months in custody without being formerly charged, only to be released without having had the opportunity to clear his or her name. Where the facts of what was otherwise a felony might be interpreted as a trespass to goods, a magistrate, or circuit judge, was empowered to determine the case under their civil powers and order compensation in settlement of the dispute. Thirty-four cases located in the later quarter sessions for the East Riding are marked as determined under the justices' civil power and includes at least one assault and one theft of hens, both of which fell within the

[144] Langbein, Origins of Adversary Criminal Trial, pp. 166-167.
[145] ERY Beverley, QSF 48/04, letter from Thomas Stillington to Mr Ward, keeper of York gaol, 29 March 1720. Any special treatment required for prisoners arising out of any medical condition had to be paid for, as they were not provided as of right
[146] The 1554 Bail Act; and 31 Ca. II c.2 (1679): An Act for the better securing the Liberty of the Subject and for Prevention of Imprisonments beyond the Seas. Otherwise known as the *Habeas Corpus* Act, it permitted a person to challenge the legality of his or her imprisonment; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Private Wrongs, vol. 3, Oxford: Clarendon Press, p. 357; Stephen, J.F. (1883) A History of the Criminal Law of England, vol. 1, London: Macmillan and Co., p. 296.

civil powers as trespasses to the person and to property. The advantage to the defendant was that the right to bail was automatic in all civil proceedings. Even so, because of the restrictions imposed by the bail and committal acts, it has been estimated that bail was granted in less than 10 per cent of criminal cases and only then for very a minor offence.[147]

Appeals from the petty sessions

In theory, the court of King's Bench could review the summary decisions of magistrates sitting in petty sessions, although, by the end of the seventeenth century appeals were more commonly made to the quarter sessions.[148] A few records of complaints against constables and bailiffs for abuse of their powers can be found in quarter session records. However, the absence of any appeals from the decisions of the summary justices to the quarter sessions for Yorkshire suggests that there was either a general level of satisfaction with the exercise of discretionary powers in this region, or a belief that a panel of two or three local justices were unlikely to sympathise very readily with a complaint brought against a fellow justice of the county. It is not possible to verify whether such appeals were made with any frequency without undertaking a more detailed review of proceedings in the King's Bench and building on work currently being undertaken by Ruth Paley and Henry Mares.[149]

While this chapter concentrates on the criminal jurisdiction of the sole and petty justices, manorial courts also played a part in local law enforcement and dealt with a range of complaints in nuisance, trespass and minor assaults for which fines could be imposed

[147] Beattie, Crime and the Courts, pp. 281-282; Beattie, 'Crime and the Courts in Surrey', at pp. 161; Herrup, The Common Peace, pp. 89-90; King, Crime, Justice and Discretion, p. 87.
[148] Baker, J.H. (2007, fourth edition, first published 1971) An Introduction to English Legal History, Oxford: Oxford University Press, p. 511; Barber, B.J. (1984) Guide to the Quarter Sessions Records of the West Riding of Yorkshire 1637-1971 and other official records, Wakefield: West Yorkshire Archive Consultative Council, West Yorkshire Archive Joint Committee, p. 8.
[149] Paley, Dr Ruth, History of Parliament Trust (24 February 2012) 'Uncovering the History of Certiorari', Institute of Advanced Legal Studies, unpublished; Mares, Henry (24 February 2012) 'Criminal Informations of the Attorney General in King's Bench and Star Chamber', Institute of Advanced Legal Studies, unpublished.

for a breach of a local byelaw and animals impounded when they strayed onto manor lands.[150] The small East Riding town of Pocklington alone possessed two active manor courts until at least the mid-eighteenth century, while the manorial court for South Cave was still active in the early nineteenth century.[151] Manorial courts exercised a number of powers that crossed over with those exercised at petty and quarter sessions.[152] While a survey of the records of the manorial court is beyond the scope of this thesis, the extent of its authority adds a further dimension to the incidence of petty crime and the processes for dealing with it.

Conclusion (pre-trial processes)

Successful policing relied on the observations of the public to notice some form of disorder, then decide what to do about it, what to say about it and to whom to say it.[153] As a result, not all suspects were apprehended and even some of those who were detained never appeared in court. Without a national police force civil order was maintained by the process of a hierarchal system, and those with 'legal' authority ranged from the parish constables to the justices of the peace, sheriffs, judges, secretaries of state and, ultimately, the king. At the lowest level, authority within the family lay with the head of each household, who was usually a man. While widows had some independence, the rights of wives, children and servants were subsumed within those of their husbands, parents and employers. Therefore, female victims of crime were in an equivocal position depending on their status, as a result of which, women were less likely than men to take the role of prosecutor.[154] Nevertheless, some women in Yorkshire played a significant role in the detection of crimes, reporting on thefts and their suspicions on hidden pregnancies and

[150] Sharpe, Crime in Early Modern England, pp. 37, 73.
[151] Crowther, J.E. and P.A. Crowther (editors) (1997), Diary of Robert Sharp of South Cave:Life in a Yorkshire Village 1812-37, Oxford: Oxford University Press for the British Academy, p. xxxix; Neave, David (1971) Pocklington 1660-1914: a small East Riding market town, Beverley, pp. 10-11.
[152] Neave, Pocklington, p. 13.
[153] Howard, 'Investigating responses to theft', p. 415 n. 40.
[154] Shoemaker, Prosecution and Punishment, p. 229; King, Crime, Justice and Discretion, p. 209.

untimely deaths, therefore maintaining a constant level of active involvement in the pre-trial process.

It is extremely difficult to estimate how many decisions were made 'not' to prosecute or to understand why some investigations failed.[155] Where disputes could be settled privately, pre-trial arrangements provided an opportunity for clemency: they avoided the criminalisation of many people and acted as counter-balance to the excesses of the 'Bloody Code'. A poor defendant without access to legal representation may have been prepared to submit to the jurisdiction of a petty magistrate, where he or she would at least have an opportunity to put his or her point of view across. Even so, private arrangements or negotiated settlements brokered by a sole magistrate or at petty sessions did not necessarily work to the advantage of the accused. The potential loss of liberty if a man or woman submitted to a trial may have persuaded some innocent people to accept the terms of an out-of-court arrangement, rather than run the risk of committal to gaol until the date of the trial or following a criminal conviction at the trial.

Despite the range of discretionary powers exercised by justices of the peace, the extent of their pre-trial jurisdiction was restricted by legal rulings. Magistrates were empowered to arbitrate a dispute and to issue bonds to keep the peace or bind an accused person by his or her recognizance to ensure his or her appearance in court. Where a matter was so serious, or there was fear that the defendant would abscond, the accused could be detained in gaol until the complaint could be heard in court. However, the recognizance process was generally biased in favour of the prosecution because it could be manipulated to punish suspected felons without the benefit of trial by jury. More specifically, the recognizance process was biased against women when doubts about a woman's capacity to be bound by

[155] Howard, 'Investigating responses to theft', pp. 411, 424.

her own recognizance meant that women were more likely to be committed to a house of correction for a breach of the peace or pending her trial.

A single woman was expected to investigate crimes against her and apprehend suspects in the same way as any man, following which she was likely to be obliged to proceed with the prosecution under pain of forfeiting any recognizance imposed upon her. Given the possibility that a single woman acting alone was more vulnerable to intimidation than some other victims, she was more likely to be required to provide higher recognizances and additional sureties than her male counterparts. Similarly, female prosecution witnesses and defendants were susceptible to being bound by higher recognizances than a man or, alternatively, threatened with imprisonment if they failed to appear.

The limited sentencing powers of a single magistrate meant that anything more than a minor dispute was likely to be referred to a higher court, at which point magistrates determined issues concerning remands in gaol and grants of bail. From there on, defendants were all but excluded from the judicial process until their appearance before the relevant court. They were not informed of the specific charges made against them; they had no means of knowing what evidence had been given to the examining justices; they were denied legal representation as of right; and their witnesses could not be subpoenaed. Until defendants appeared in court for their trial, they did not know whether they would be expected to fight for their lives (on a capital charge) or find that the prosecutor had failed to appear and that the case against them had been dismissed.[156]

[156] Holdsworth, W.S. (1926) A History of English Law, (1485-1700), vol. 9, Book 4, London: Methuen & Co Ltd, p.232; Stephen, A History of the Criminal Law p. 398.

Chapter 2. The judicial process (2): the experience of men and women before the quarter sessions for Yorkshire.

The Quarter Sessions of the Peace; which by long Experience, is prov'd to be the best Court that ever was instituted, for the general Advantage and Ease of the Subject.[1]

As demonstrated in the previous chapter, local justices of the peace played an important role in the peace-keeping process and were central to the management of criminal prosecutions during the eighteenth century. A structured system for the enforcement of the criminal law was an essential element in maintaining civil order and for the protection of individual rights to life, liberty and property. This chapter examines the judicial processes undertaken at quarter sessions and considers the evidence they present of gendered practices exercised by those participating in proceedings before the lower court. It begins with an examination of the jurisdiction of the court and the rules of evidence and procedure which governed its work and which, from time to time, both enabled and frustrated the protection of individual rights. It goes on to consider evidence of the gendered exercise of discretion by prosecutors, juries and justices of the peace in the application of those rules to the criminal jurisdiction of the court and the effect of their decisions on those who appeared before them.

Constitution of the court and its officers

As the name suggests, quarter sessions took place at least four times a year in the presence of a clerk of the peace (a qualified lawyer) and might be held more frequently if required.[2] Sessions could be held at any place within the county or riding for which it was

[1] Tancred, Christopher (1727) An essay for a general regulation of the law, and the more easy and speedy advancement of justice, London: printed for Stephen Austen, pp. 138-139. Tancred was a justice of the peace for Whixley in the West Riding of Yorkshire.

[2] 25 Edw. III Stat. 2. c.7 (1351) provided that sessions of Justices should be held quarterly 'or Oftener'; 12 Ric. II c.10 (1388), Act for the Commission of the Justices of the Peace, enacted that quarter sessions should be held four time a year, for at least three days; 2 Hen V, Stat. 1 c.4 (1414/5) An Act requiring Justices of the Peace to hold Quarter Sessions, set the four quarter dates as the first weeks after Michaelmas (September)

summoned and sessions for the West Riding operated on a peripatetic basis, sitting in twelve different locations on a regular circuit of ten sittings each year.[3] Seven locations for sessions are recorded for the North Riding, while in the more rural areas of the East Riding, where justices of the peace were more thinly spread across the Riding, quarter sessions took place only on the quarter dates in one or other of two locations.[4] The implications for those accused of a felony, or who were detained for a breach of the peace, was that the length of time they might be held in custody before a hearing at the quarter sessions depended on the frequency of local court sittings. For other defendants, prosecutors and their witnesses, the distance they had to travel depended on the particular location they had to visit on the date their case was listed for trial.

Two justices of the peace for each county were required to issue an advance notice of each sitting of the quarter sessions to the sheriff of the county, stating the date, time and location of the particular session, where they were required to undertake an array of administrative matters in addition to the exercise of their criminal powers. There was an extensive list of men of the county obliged to attend each session and it was the role of the sheriff (or his deputy) to ensure that the relevant people were notified.[5] A legal clerk was responsible for the administration of the court and gave advice on matters of law and procedure, while the *Custos Rotulorum* was responsible for custody of the records of the assize and quarter sessions. The sheriff (or his deputy) was required to call sufficient jurors to make up the grand and petty juries; receive prisoners in court, who had been previously

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Epiphany (January) Easter (March/April) and the Translation of St. Thomas the Martyr (7 July) and more often if need be. 'General sessions' was the term given to sessions held at other time of the year: Burn, Justice of the Peace, vol. 2, p. 383.

[3] Records of quarter sessions for the West Riding of Yorkshire show a regular pattern of sittings in Barnsley, Bradford, Doncaster, Halifax, Knaresborough, Leeds, Pontefract, Rotherham, Sheffield, Skipton, Wakefield and Wetherby.

[4] Records of quarter sessions for the North Riding were shared between Easingwold, Guisborough, Northallerton, Richmond, Scarborough, Thirske and York (with separate sessions for the city and county of York). Sessions in the East Riding were shared between Beverley and Hull.

[5] Stubbs, W., G. Talmash (1749, second edition) The Crown Circuit Companion, London: J. Worrall, pp. 31-32: at least 24 men were required as a minimum of 12 were needed to constitute a grand jury and another 12 men for the petty jury.

committed to gaol; and collect fines imposed by the court. Constables of the hundreds and other warranted officials, such as bailiffs and their deputies, were required to attend the sessions and file returns on the duties undertaken since the previous sessions. The gaoler and governor of the house of correction attended each session to present their calendar (record) of those persons in gaol and to receive any new prisoners committed at the sessions. At least twenty-four men of the county were required to attend court to act as a jury of inquiry (grand jury) and a similar number to sit as the trial jury (petty jury). Finally, any persons bound by their recognizance to prosecute, defend, or stand as prosecution witnesses were required to attend court or risk forfeiting his or her bond.[6] With the exception of the parties and witnesses to a case, women were conspicuous by their absence from the official proceedings of the quarter sessions.

Jurisdiction

The original jurisdiction of the justices at quarter sessions was to hear and determine all trespasses and felonies.[7] Over time, their powers were extended to encompass any behaviour that tended to injure the public, such as assaults and batteries and any activities that impeded trade or the administration of government.[8] A few apparently serious offences are found in the records of the quarter sessions (rather than the assizes) but any restrictions on the powers of the justices to hear and determine felonies were applied as a matter of discretion and convenience, rather than the lack of jurisdiction.[9] Conversely, an indictment for a misdemeanour could only be presented and tried at quarter sessions with the consent of both parties, which explains why some apparently minor complaints appear

[6] Dickinson, William esq., (1820, second edition) A practical guide to the quarter sessions and other sessions of the peace, adapted to the use of young magistrates, and professional gentlemen, at the commencement of their practice, London: J. And W.T. Clarke, pp. 24-87; Stubbs and Talmash, The Crown Circuit, pp. 37-38.
[7] 34 Edw. III. c.1 s.1 (1360), 'Who shall be Justices of the Peace. Their Jurisdiction over Offenders; Rioters; Barrators'.
[8] 1 Edw. III c.1, s. 6, (1327) Justice of the Peace Act, empowered the lower court to determine disputes in trespass; Dickinson, A practical guide, pp. 121-123.
[9] Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of the Rights of Persons, vol. 1, Oxford: Clarendon Press, p. 342.

in the assize records.[10] In practice, the work of quarter sessions extended far beyond hearings of misdemeanours and petty larcenies and by the eighteenth century the jurisdiction of the court included: dissolution of apprenticeships, combinations, conspiracies, embezzlement, engrossing, extortion, forestalling, gaming, highway matters, larceny, lewdness, libels, nuisances, poaching, common law riot, trespass, obtaining money under false pretences, the poor laws and vagrancy, although their jurisdiction did not extend to new offences created by statute, unless specifically permitted.[11]

From the mid seventeenth century onwards, it became the general practice for the most serious offences to be transmitted to the assizes, leaving the quarter sessions to deal with the vast majority of complaints of a less serious nature.[12] Nonetheless, the jurisdiction of the quarter sessions had been extended by a series of statutory provisions enacted between 1623 and 1718, which increased its sentencing powers of first time convicts for a felony.[13] Historically, men convicted of a common law felony could on a first conviction claim the 'benefit of clergy' if they were able to read a verse from the Bible (known as the 'neck verse'), following which they would be branded on the thumb and then released. Statutes of 1623 and 1691 extended the benefit to women and when the reading test was abolished in 1706 the benefit was universally applied to anyone convicted of a common law felony for the first time.[14] However, the passing of the Transportation Act in 1718 saw a steep decline in the number of men and women branded and discharged for a first felony, in

[10] Dickinson, A practical guide, pp. 88-89. Offences which are triable at either the assize or quarter sessions at the discretion of the parties are described as being 'triable either way'.

[11] Duties of justices of the peace were revised by a Commission of 1590 which authorized the justices to enforce all statutes concerning the peace, gave them powers to enquire into a variety of felonies and offences at common and statute law and instructed them to hold regular sessions. Forster, G. C. F. (1973) The East Riding Justices of the Peace in the Seventeenth Century, Beverley: East Yorkshire Local History Series 30, pp. 36-67; Crowther, J.E. and P.A. Crowther (editors) (1997), Diary of Robert Sharp of South Cave: Life in a Yorkshire Village 1812-37, Oxford: Oxford University Press for the British Academy, pp. xxxix-xli; Dickinson, A practical guide, p. 90.

[12] Forster, The East Riding Justices, p. 15; Stubbs and Talmash, The Crown Circuit, pp. 36-37.

[13] 21 Jac. I, c.6 (1623), Act concerning Women convicted of small Felonies; 3 Wm. & M., c.9 (1691) Benefit of Clergy Act.

[14] 6 Anne, c.9 s. 4 (1706), An Act for punishing felons, provided that reading was no longer required of persons pleading benefit of clergy.

favour of their being transported to America for a term of seven years.[15] At the same time, the number of offences to which the benefit of clergy applied diminished as legislators failed to extend the benefit to any new statutory felonies.

With very few exceptions, the law made no distinction between crimes committed by a man or a woman. By definition, only a woman could be indicted for petit treason (the murder of a husband) while only a man could commit rape or sodomy. While those distinctions were inalienable, the procedural rules determining which courts had jurisdiction over particular crimes were less clearly defined. By the eighteenth century, justices of the peace no longer had the power to hang a felon and the last death sentence recorded for the quarter sessions in the North Riding of Yorkshire was passed in 1654.[16] Therefore, any bill of complaint for a capital offence should have been presented at the assizes. Nevertheless, a survey of cases referred to the quarter sessions in Yorkshire (Table 2.1) demonstrates that those rules were not always adhered to.

The crimes that particularly stand out in Table 2.1 as belonging in the assizes rather than quarter sessions are those of homicide, highway robbery and rape. Of the three homicides cases, the indictment of Edward Hope in 1738 for poisoning a young boy was committed to the assizes.[17] No records have been located for the trials of Susannah Evans, accused of the murder of her three year old bastard child in 1772,[18] or of Thomas Graves, accused of the murder of Ann Walker in 1768,[19] although, it is possible that either one of those cases were transferred to the assizes, given the capital nature of the allegations.[20]

[15] 4 Geo. I (1718), Act for the further Preventing Robbery, Burglary and other Felonies and for the more effectual Transportation of Felons.
[16] Sharpe, J.A. (1999, first edition 1984) Crime in Early Modern England, 1550-1750, London and New York: Longman, p. 34.
[17] York Courant 6 June 1738; TNA ASSI 41/3, Crown Minutes, York city, July 1738.
[18] ERY Beverley, QSF/256/B/5, QSV/2/9, Midsummer 1772.
[19] TNA E 3 89/244 f. 473, NRY, Aug 1768.
[20] See glossary.

Table 2.1: Work of Yorkshire quarter sessions, 1735-1775 [21]

		%		%
Total indictments	**M**		**F**	
6460	**5257**	**81.4**	**1203**	**18.6**
	5257		**1203**	
Arson and criminal damage	20	**0.4**	1	**0.1**
Assault	1373	**26.1**	251	**20.9**
Bastardy	201	**3.8**	0	**0.0**
Burglary	44	**0.8**	9	**0.7**
Coining, fraud, forgery	168	**3.2**	24	**2.0**
Felony	417	**7.9**	163	**13.5**
Highway Robbery/Robbery	3	**0.1**	1	**0.1**
Keep the Peace	95	**1.8**	3	**0.2**
Misdemeanours[22]	534	**10.2**	81	**6.7**
Homicide	2	**0.0**	1	**0.1**
Perjury	9	**0.2**	2	**0.2**
Poaching	102	**1.9**	0	**0.0**
Rape/sodomy	10	**0.2**	0	**0.0**
Riot	249	**4.7**	28	**2.3**
Theft	1211	**23.0**	499	**41.5**
Trading offences	257	**4.9**	59	**4.9**
Trespass	323	**6.1**	21	**1.7**
Other complaints[23]	240	**4.6**	60	**5.0**
Total		100.0		100.0

Allegations against three men of highway robbery were transferred to the assizes, while the one female charged with robbery remained to be dealt with by the lower court, despite statutory enactments which excluded highway robbery and robbery from the

[21] Based on records collated from extant quarter session records from the local record offices for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 18-20.
[22] Misdemeanours includes: nuisance, vagrancy, neglect of parish duty; failing to maintain the highway; pound breaches; and other matters described as 'misdemeanours'.
[23] Other complaints includes: apprenticeship, employment and other general complaints.

benefit of clergy.[24] The bill of complaint alleging pick-pocketing (or robbery) by Mary Dawnay to the value of 16s 6d should not have remained within the jurisdiction of the quarter sessions.[25] Nevertheless, it did and being found guilty of her first felony, Dawnay was sentenced to transportation for seven years. Any allegation of rape or sodomy should have been referred to the assizes, as a capital offence without benefit of clergy, although, those complaints described in terms of an attempt to commit the offence fell within the jurisdiction of the lower court as an assault.[26]

The absence of women from certain offences in Yorkshire is to be expected and must reflect the different opportunities for committing crime by men and women, when women were less likely to operate away from home or at night. King's study of female offenders in late eighteenth-century Essex similarly revealed that women were rarely indicted for poaching and constituted only a small fraction of all wood and vegetable thieves.[27] Neither is there any evidence that women were regularly accused as receivers of stolen food and the like, although, that outcome may not be unexpected when the penalty for receiving stolen goods was transportation for fourteen years.[28]

As illustrated in Table 2.1, thefts and assaults committed by men and women make up the greater part of the work at the quarter sessions in Yorkshire. Theft was the most common offence referred to the quarter sessions and accounts for 41.5 per cent of the complaints against women during the periods surveyed, while complaints against men for similar offences represent only 23.0 per cent of male offending in the lower court. Therefore,

[24] 1 Edw. VI, c.12, s. 9 (1547) Privileges of Clergy and Sanctuary Act, removed the privilege of benefit of clergy from, *inter alia*, murder, housebreaking, highway robbery, horse theft and theft from a church; 21 Jac. I, c.6, (1624) extended benefit of clergy to women, with the exception of cases of burglary, highway robbery and robbery.
[25] NRY Thirske, NR QS vol. 8 NRY Thirske, October 1744; York Courant, 26 March 1745.
[26] 13 Edw. I, c.34 (1285) Judgement of Life and Member for Rape Act, made rape a felony punishable by death; East, E.H. (1803) A Treatise of the Pleas of the Crown, vol. 1, London: J Butterworth, p. 434.
[27] King, Crime, Justice and Discretion, p. 196.
[28] 4 Geo. I, c.11 (1718); see pp. 251-253.

chapter 6 examines reasons why that occurred in relation to female motivations to steal. Inconsistencies in the allocation of work between the higher and lower courts are illustrated in two cases concerning the same defendant. Benjamin Whiteley appeared at the York Assizes on an indictment for poaching (for which he was convicted and fined 3s. 4d) when common practice was that trespass and gaming offences were dealt with at quarter sessions as a trespass to goods, rather than a felony.[29] Later the same year, Whiteley appeared before Leeds quarter sessions charged with the theft of various items of clothing valued at 3s. 8d, even though it might be expected that the complaint would have been referred to the assize court, because the value of items stolen exceeded the 1s. limit for a 'petit larceny'.[30] However, statutory provisions allowing first time felons the benefit of clergy meant that quarter sessions justices had sufficient sentencing powers to determine that case.

In contrast with theft, the percentage of men and women accused of an assault at quarter sessions for the county was much closer when allegations of assault account for 26.1 per cent of all male offending and 20.9 per cent of all female crime referred to the lower court (Table 2.1). Concern with public order is demonstrated in the role of justices at quarter sessions to determine whether men and women bound by orders to keep the peace issued by a sole or petty justices could be released with, or without, further sureties for his or her good behaviour. Because of variations in record keeping, it is possible that some orders to keep the peace are lost in the general category of misdemeanours.

[29] TNA ASSI 44/81, York County, March 1766; see 22 & 23 Ca. II, c.25 (1670/1671) Act for the better preservation of the Game, and for the securing of Warrens not inclosed, and the several Fishings of this Realm, provided that a person convicted under the Act could be ordered to pay compensation and a fine; or up to one month in the house of correction on non-payment of the fine and compensation; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Public Wrongs, vol. 4, Oxford: Clarendon Press, p. 174.
[30] WRY Leeds, QS4/35 170-180, October 1766.

The trial process

The quarter sessions for Leeds in April 1737 were presided over by justices of the peace, four of whom carried the title 'Sir' and the remainder the honorary title of 'esquire' (if they were not esquires in their own right) and they were supported by a legal clerk. Grand juries comprised a minimum of twelve and maximum fifty men, who were appointed subject to a freehold property qualification.[31] The social status of men appointed to the grand jury was relevant to their appointment, as noted in a study of nineteenth century juries where the social composition of grand juries at the assizes might include justices of the peace, members of parliament and men from the leading families of the county, while at quarter sessions it was more likely to be comprised of local landholders.[32] The grand jury at Leeds quarter sessions in 1737 was comprised of fifteen men, with the courtesy title of 'gentlemen', while the twelve petty jurors were described as 'yeomen'.[33] The occupation of petty jurors is not generally stated but as both grand and petty juries were comprised of men who passed the property qualification test, it is possible that many lacked empathy with those who committed trespasses and other offences against property.[34]

[31] The property qualification for members of the grand jury was that they should be freeholders of property to the value of 40 shillings or, in a town or city, owners of forty shillings worth of goods. Cornish, W.R. and G. de N. Clark (1989) Law and Society in England 1750-1950, London: Sweet and Maxwell, p. 562; Herrup, Cynthia B. (1987 first edition) The Common Peace: Participation and the Criminal Law in Seventeenth-Century England, Cambridge: Cambridge University Press, p. 98; Cockburn, J.S. (editor) (1977, first edition) Crime in England 1550-1800, London: Methuen & Co Ltd , p. 23.

[32] See p. 130; Ireland, Richard 'Putting oneself on whose country? Carmarthen juries in the mid-nineteenth century', p. 9, http://www.welshlegalhistory.org/uploads/wlhs_publications_I_63.pdf, accessed 25 August 2012.

[33] WRY Leeds, QS4/28, 19 April 1737. See the debate on the wealth and social background of jurors in Green, T.A. (1988) 'A Retrospective on the Criminal Trial Jury, 1200-1800', in Cockburn, J.S. and T.A. Green (eds.) Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800, Princeton: Princeton University Press, pp. 358-402.

[34] The property qualification for jurors was raised by the 4 Geo. II, c.7 (1730), Act for the better Regulation of Juries, when jurors were required to possess £100 in real or personal property, although in 1731 this was expanded to include leaseholders with £50, ensuring that those drawn from the labouring classes were exempt from jury service.

At the commencement of each session members of the grand jury were sworn in and began the business of the sessions by examining any new bills of complaint.[35] Prosecutors and their witnesses, but not defendants, could testify before a grand jury in order to establish a *prima facie* case to answer. As a result, while some prosecutors were able to test the strength of their case before presenting their case to the petty jury, the accused remained ignorant of the details of the charges against them until they appeared before the bar of the court and asked to enter a plea of 'guilty' or 'not guilty'. The rationale behind this procedure is linked to the history of the absence of legal representation in criminal trials for capital offences,[36] because of a belief that an innocent person ought to be able to present his or her defence through the truth of his or her responses, without the need to be forewarned of the charges in order to 'prepare' a defence.[37] As a result, unprepared defendants had no time to prepare a defence or call witnesses, which might prove crucial when they found themselves defending a more serious offence than they might have suspected. With fine distinctions between the capital felony of grand larceny and the misdemeanour of a petty larceny (broken only by the 1s. threshold), or between the capital felony of burglary and theft from a house (which triggered the grand or petty larceny distinctions), ignorance of the terms of the indictments placed the defendant in the weaker position by the time his or her case came to trial.

If a consensus of twelve men of the grand jury concluded that there was sufficient evidence of a *prima facie* case, the bill was endorsed *billa vera* (a true bill) or otherwise

[35] 'Presentments' were used to commence a complaints concerning maintenance of highways and 'informations' were occasionally used at quarter sessions or assizes to institute proceedings under particular statutes but were more commonly used to commence actions at King's Bench, although the terms 'indictment' and 'information' are occasionally found to have been incorrectly applied in court records.
[36] See pp. 103-104.
[37] Langbein, John H. (1973) 'Origins of Public Prosecution', The American Journal of Legal History, vol. 17, pp. 313-335, pp.1-3; Baker, J.H. (2007, fourth edition, first published 1971) An Introduction to English Legal History, Oxford: Oxford University Press, p. 510.

marked *ignoramus* (we do not know).[38] The finding of a true bill was not a conviction but a finding of sufficient evidence to initiate a trial before a magistrate and petty jury of another twelve men. In the same way, a finding of *ignoramus* was not an acquittal and a new bill could be drawn up and laid before another grand jury at a later date.[39] Finding out how many or what type of cases were dismissed as *ignoramus* can be difficult to assess as the deliberations of the grand jury were held *in camera*, with no record taken of what was said and a requirement to deface or destroy copies of the bills dismissed.[40] Fortunately, minute books for the quarter sessions in Yorkshire tend to include a note of failed bills and allows for an analysis of failed bills at the Yorkshire sessions, set out in Table 2.2 below.

Cynthia Herrup interpreted the number of failed bills in the previous century as evidence that grand jurors were not prepared to accept unfounded allegations based on bad reputation, circumstantial evidence or the evidence of a third party but required evidence of "careful investigative work".[41] Likewise, Malcolm Gaskill concluded that the greater inclination to draw grand jurors and magistrates from the social elite after 1680 meant that higher standards of evidence were expected and traditional 'hearsay' evidence was likely to be rejected.[42] Conversely, because they were drawn from the social elite a greater number of grand jurors may have been motivated by concerns relating to the protection of interests in property.[43] Nevertheless, the process was more than a rubber stamp procedure and some historians have estimated that up to one fifth of cases could be dismissed by a

[38] Baker, An Introduction to English Legal History, p. 505; Cockburn, J.S. (1985) Calendar of Assize Records: Home Circuit Indictments Elizabeth I and James I, Introduction, London: HMSO, p. 52; Baker, 'Criminal Courts and Procedure', p. 19.
[39] Baker, An Introduction to English Legal History, p. 505.
[40] Stubbs and Talmash, The Crown Circuit, p. 12; Herrup, The Common Peace, p. 114.
[41] Herrup, The Common Peace, p. 114.
[42] Gaskill, Malcolm (1996) 'The displacement of Providence: policing and prosecution in seventeenth- and eighteenth-century England', Continuity and Change, vol. II, pp. 341-374, p. 353.
[43] Beattie, J.M. (2002, first published 1986) Crime and the Courts in England 1660-1800, Oxford: Oxford University Press, pp. 332-333; Beattie, J.M. (1977) 'Crime and the Courts in Surrey 1736-1753', in J.S. Cockburn (ed), Crime in England 1550-1800, London: Methuen & Co Ltd, pp. 155-186, p. 163.

strongly independent grand jury in an ordinary year.[44] That is consistent with the records of failed bills set out in Table 2.2, where 20.2 per cent of all bills against men and 15.5 per cent of bills against women were rejected during the periods surveyed. The different treatment of men and women in the pre-trial process is difficult to interpret when it may have been the case that discretion had been exercised in favour of a greater proportion of women during an earlier stage of the criminal justice process, so there were fewer cases of female accused to 'weed out' at this stage. Alternatively, the court records may provide evidence that men were treated more leniently than women by grand juries and/or that men were more likely to have spurious charges laid against them, while complaints were more commonly made against women only when there was strong evidence against them. Chapters 4 to 6 of this thesis include an analysis of how those figures were broken down by gender and specific types of crime.

Table 2.2: Failed bills at Yorkshire quarter sessions, 1735-1775 [45]

		M	**%**	**F**	**%**	
All matters	6460	**5257**	**81.4**	**1203**	**18.6**	100.0
		5257		**1203**		
Bills not found		1062	**20.2**	186	**15.5**	

All true bills were returned to the magistrate in order that warrants could be issued for the appearance of those indicted at the next session hearing or transferred to the assizes, although the limitations on a justices' powers to grant bail to those accused of a felony meant that many prisoners were committed to gaol and had to remain there until they were

[44] Cornish and Clark, Law and Society, p. 562; Baker, J.H. (1977, first edition) 'Criminal Courts and Procedure at Common Law 1550-1800', in Cockburn, J.S. (editor) (1977) Crime in England 1550-1800, London: Methuen & Co Ltd, pp. 15-48, pp. 18-20; Baker, An Introduction to English Legal History, p. 505; Emsley, Clive, Tim Hitchcock and Robert Shoemaker, "Crime and Justice - Trial Procedures", Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0), accessed 21 January 2012.

[45] Based on records collated from extant quarter session records from the local record offices for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 18-20.

presented for trial.[46] Once the presiding justices and petty jurors were assembled in the court room, prisoners due to stand trial were called to the bar of the court, at which point they were entitled to make any peremptory challenges to members of the jury, although this right was unlikely to have been exercised by many unrepresented and illiterate defendants. Each prisoner was called in turn to the bar of the court where, for the first time, they heard the specific charges set out in the indictment as it was read out in court and their pleas of 'guilty' or 'not guilty' were taken.[47] It was accepted practice that defendants should plead 'not guilty', whatever the evidence against them, in order that they should have an opportunity to plead any mitigating circumstances.[48] Otherwise, when a plea of 'guilty' was entered the matter proceeded directly for sentencing.[49]

Because the details of an indictment were unknown to a defendant until it was read out in court, a defendant could enter a traverse in order to challenge any matter of fact alleged in an indictment asserting a misdemeanour.[50] The possible outcomes from entering a traverse were either that the traverse was found and the defendant discharged or a revised claim put to a petty jury; if the traverse was not found, the case proceeded to trial. Justices of the peace had no authority to compel a defendant who was not in custody to take his or her trial at the same sessions if he or she had pleaded their traverse.[51] In those circumstances, the trial might be put over for a day or two within the same sessions or postponed until the following quarter sessions. Records of the quarter sessions for Yorkshire commonly include orders for a recognizance of £20 from the accused and £10 from each of two sureties to ensure that the accused appeared to try his or her 'traverse' at

[46] See pp. 72-73; Stubbs and Talmash, The Crown Circuit, pp. 39-40; Beattie, 'Crime and the Courts in Surrey', p. 161.
[47] Stubbs and Talmash, The Crown Circuit, p. 51.
[48] Stubbs and Talmash, The Crown Circuit, p. 47.
[49] Stubbs and Talmash, The Crown Circuit, p. 54: an exception was made in cases of minor assaults when a defendant was allowed to present mitigating evidence.
[50] Dickinson, A practical guide, p. 110.
[51] Blackstone, Commentaries, vol. 4, p. 345; Dickinson, A practical guide, pp.110-111.

the next assize or quarter sessions. The traverse delayed proceedings for a sufficient period to allow a defendant time to prepare a defence or, alternatively, gave the defendant time to 'persuade' the complainant to withdraw his or her claim before the following sessions. Such opportunities to avoid a trial account for a small proportion of 'unknown' verdicts found in the records of both courts (see Tables 2.6 and 3.3).

Where a complainant appeared in court to defend his or her claim against the defendant's traverse, some defendants withdrew their challenge and submitted to the indictment in order to avoid the expense of engaging a lawyer to present the legal argument required in support of the traverse. When Richard Sheppard was accused of buying and selling grain without a licence, he engaged an attorney to challenge the terms of the indictment.[52] As a tradesman he was likely to be better able than many to afford an attorney, nevertheless, (and possibly because of the advice he received) Sheppard later withdrew his objection and submitted to a fine.[53] When Elizabeth Wilson was indicted at Doncaster quarter sessions for the theft of a purse valued at 1d. and 37s. in money, she entered a traverse to the indictment (even though the alleged offence was a felony not a misdemeanour), presumably in order to have the charge reduced from pick-pocketing to simple theft. The matter was referred to the assizes and Wilson was convicted of the capital offence of pick- pocketing.[54] Although her challenge failed, entering a traverse had been her only opportunity to have the capital charge against her reduced.

Although, gaining time to prepare a defence may have been sufficient reward for some defendants, it is not surprising to find in Table 2.3 that few male defendants (8.3 per cent) and fewer female defendants (5.7 per cent) were either able or prepared to take advantage

[52] WRY Rotherham, QS4/29 147, 24 January 1741.
[53] WRY Rotherham, QS4/29 125, 13 August 1740
[54] WRY Doncaster, quarter sessions, January 1741, the capital sentence was subsequently commuted to transportation for fourteen years.

of that procedure. Legal challenges by way of a traverse were likely to extend the time it took to settle a case, the outcome uncertain and the procedure costly: "And save the expense of long litigious laws, Where suits are traversed, and so little won That he who conquers is but last undone".[55]

Table 2.3: Traverse at Yorkshire quarter sessions, 1735-1775 [56]

		M	**%**	**F**	**%**	
All matters	6460	**5257**	**81.4**	**1203**	**18.6**	100.0
		5257		**1203**		
Traverse		436	**8.3**	68	**5.7**	

Once a 'not guilty' plea had been entered by a defendant, the bailiff read out the following notice to the jury before the trial could commence:

> Upon this indictment he hath been arraigned; upon his arraignment he hath pleaded not guilty; and for his trial hath put himself upon God and the country, which country you are; so that your charge is to inquire, whether he be guilty of this felony, whereof he stands indicted, or not guilty; if you find him guilty, you shall inquire what lands, tenements, goods, and chattel he had at the time of the felony committed, or at any time since.[57]

Directions given to juries made no reference to the standard of proof they should expect from the prosecution case in order to justify a conviction. The term 'beyond reasonable doubt' had yet to be expressed, leaving greater scope for the exercise of discretion in the

[55] Dryden, John (1700) 'To my Honour'd Kinsman', The Literature Network at http://www.online-literature.com/dryden/poetical-works-vol2/13/, accessed 2 January 2012.
[56] Based on records collated from extant quarter session records from the local record offices for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 18-20.
[57] Dickinson, A practical guide, p. 185.

interpretation of evidence by the petty jury.[58] While James Whitman's research dates the introduction of the test of 'beyond reasonable doubt' to about 1780 it was not universally applied until at least the 1820's.[59] Whitman noted that directions from judges sitting on trials at the Old Bailey in the 1780's included terms such as 'surest side', 'safer way' or 'any degree of doubt',[60] while Chitty's directions for juries in 1819 were, "upon the whole, if you believe the evidence for the king … you must find him guilty".[61] Without clear directions on the evidential standards required from the prosecution, petty juries were able to exercise greater discretion in reaching a verdict than would have been available to them had more rigorous rules applied.

The purpose of the final instruction for jurors to enquire into the personal wealth of each defendant following a guilty verdict, was in order to determine whether they possessed any goods, chattels, land or tenements that might become *estreated* (forfeit) to the crown following his or her conviction for a petit treason or felony and applied to cover the costs of the proceedings or the costs of the upkeep of any children who became dependant on the parish when a mother and/or father was capitally sentenced, ordered for transportation or imprisoned.[62] The issue of mothers and children was not necessarily a barrier to sentencing and one entry in the quarter sessions for Beverley includes an invoice for the maintenance of the child whose mother was to be transported,[63] although, as Walker

[58] Whitman, James Q. (2008) The origins of reasonable doubt: theological roots of the criminal trial, New Haven, Conn., London: Yale University Press, p. 4.
[59] Whitman, The origins of reasonable doubt, p. 4.
[60] Whitman, The origins of reasonable doubt, p. 4, n. 17-19.
[61] Chitty, Joseph (1819) A practical treatise on the criminal law: containing precedents of practical forms, with notes etc., vol. 4, Philadelphia: Edward Earle, p. 316.
[62] Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of the Rights of Things, vol. 2, Oxford: Clarendon Press, p. 252; Blackstone, Commentaries, vol. 4, p. 378; Stubbs and Talmash, The Crown Circuit, pp. 16-18.
[63] ERY QSP/157, c.1723-1734, petition of Richard Woodhouse, 'gentleman gaoler of York'.

observed, "motherless children and bereft husbands did not sit well in early modern society".[64]

The term 'innocent until proven guilty' is credited to William Garrow, which places the origins of that legal presumption to some point after 1783.[65] Until then, the role of prosecution witnesses was described in terms of 'confirming' or 'corroborating' the truth of an accusation, which tends to imply that the underlying accusation was fundamentally true.[66] Prosecution witnesses were required to testify under oath and were subject to examination by the prosecution and cross-examination by the justices and the defendant (or defence lawyers).[67] There was a general rule preventing the repetition of 'hearsay' evidence in court and written witness depositions were excluded from production as evidence of things said prior to the trial.[68] However, a confession made before a magistrate at the time of his inquiry was admissible in evidence against a defendant who subsequently pleaded 'not guilty'.[69] Even so, because depositions were not *verbatim* accounts of what was said, the examining justice (or legal clerk) was required to attend subsequent hearings on the complaint in order that he could be cross-examined on its contents. An 'implied' confession arose in non-capital offences when the accused did not enter a plea of 'guilty' but 'submitted' to a small fine, which the court could accept if they thought fit, because a submission did not amount to a conviction (see Table 2.7).[70]

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[64] Walker, Garthine (2003) Crime, Gender and Social Order in Early Modern England, Cambridge: Cambridge University Press, pp. 198-199, 206.
[65] Potter, Harry (2012) 'Presumed Innocent: The Strange Case of the Law', episode 3 of 3, BBC Bristol. See, Hostettler, J., and R. Braby (2010) Sir William Garrow, Hampshire: Waterside Press, p. x. Garrow was called to the bar in 1783.
[66] Blackstone, Commentaries, vol. 4, p. 343; Dickinson, A practical guide, p. 90.
[67] Blackstone, Commentaries, vol. 3, p. 370.
[68] Blackstone, Commentaries, vol. 3, p. 368; Holdsworth, W.S. (1926) A History of English Law, (1485-1700), vol. 9, Book 4, London: Methuen & Co Ltd, pp. 218-219; Beattie, Crime and the Courts, p. 22; Langbein, Origins of Adversary Criminal Trial, pp. 178-180.
[69] Hale, Sir Matthew (1736, first published 1680) *Historia placitorum coronae*: The History of the Pleas of the Crown, vol. 1, London, p. 304; Dickinson, A practical guide, pp. 207 and 216; Burn, Richard (1755) Justice of the Peace and Parish Officer, vol. 1, London, p. 214.
[70] Burn, Justice of the Peace, London, vol. 1, p. 214; Langbein, Origins of Adversary Criminal Trial, pp. 218-223.

The rules of evidence in criminal proceedings favoured the 'best evidence rule', that is, if the best evidence was found to have been withheld, the assumption was that it would have prejudiced the party in whose power it was to produce it.[71] Nonetheless, the rules of evidence prohibited any 'interested persons' giving direct evidence for fear that their testimony might be biased.[72] The definition of an 'interested person' applied to the testimony of both the prosecutor and the defendant, although, a victim prosecutor could be a witness on his or her own behalf where the only sentence permitted was a fine. Similarly, for reasons concerning lack of independence and *coverture*, a husband and wife could not generally be witnesses for or against each other.[73] Testimony of the defendant continued to be excluded until the second half of the nineteenth century, which made it extremely difficult to prove a just cause or put forward a defence, which was further aggravated by statutory rules of evidence requiring at least two 'independent' witnesses to substantiate a claim.[74] The witness rule was particularly onerous for the victims of capital assaults against the person, such as rape, when the act was committed secretly and where it was difficult to prove that the act was not consensual.[75] Similarly, with limited forensic knowledge, it would have been extremely difficult to provide tangible evidence of either theft or homicide. In those circumstances, even prosecutors of limited financial means were likely to seek legal advice and/or representation.

[71] Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Private Wrongs, vol. 3, Oxford: Clarendon Press, p. 368; Dickinson, A practical guide, p. 192.
[72] Dickinson, A practical guide, p. 198; Oldham, James (Spring, 1994) 'Truth-Telling in the Eighteenth-Century English Courtroom', Law and History Review, vol. 12 (1), pp. 95-121, p. 96.
[73] Hale, Pleas of the Crown, vol. 1, London, p. 301; Blackstone, Commentaries, vol. 4, p. 350; Dickinson, A practical guide, p. 200.
[74] Hale, Pleas of the Crown, vol. 1, London, p. 299; Blackstone, Commentaries, vol. 3, p. 371; 14 & 15 Vict., c.99 (1851) the Law of Evidence Act, s. 2 'Parties to be admissible Witnesses'; 30 &31 Vict., c.35, s. 3 (1898) An Act to remove some Defects in the Administration of the Criminal Law, defendants were permitted to give sworn testimony. Prosecution witnesses had been permitted to give evidence on oath since the mid-sixteenth century.
[75] See pp. 136-137.

Common law rules prohibited defendants from answering any questions on oath, so as to 'protect' them from being tempted to lie on oath, although the rules on defence witness testimony were relaxed at the beginning of the eighteenth century, so that they at least were allowed to give sworn evidence.[76] In an early-modern Christian society, the credibility of evidence given on oath, or not, would have been far more relevant than might be apparent today. The limitations on admissible prosecution and defence evidence might explain how so many cases could be dealt with in a very short space of time at the assize and quarter sessions; yet, despite all the obstacles to a successful prosecution, poor prosecutors were not wholly deterred and a great number of complainants were prepared to prosecute those who aggrieved them, whatever the outcome might be.[77]

Remarkably, there were few restrictions on the evidence of accomplices, even if they had confessed their guilt, subject to the *caveat* that he or she should not have been indicted for the offence.[78] The rationale for allowing accomplice evidence was that it might otherwise be impossible to find evidence to convict many offenders. As previously considered,[79] many judges were uncomfortable with the possibility of convicting a prisoner on the uncorroborated evidence of an accomplice; therefore, some justices (and assize judges) appear to have interpreted advice on the admissibility of accomplice evidence as a matter of discretion for the court.[80] The ability of a petty jury to determine the credibility of evidence given by an accomplice or to assess the value of evidence generally should not be underestimated, as the records surveyed for this thesis suggest that 'middling' classes of

[76] Stat. 1 Ann., Stat. 2, c, 9, s. 3 (1702), An Act for punishing Accessories, allowed defence witness to give sworn testimony; Baker, An Introduction to English Legal History, pp. 509-511; Holdsworth, A History of English Law, vol. 9, Book 4, pp. 188-189, 196: members of the clergy were also exempt from giving evidence on oath in case they were tempted to commit the mortal sin of perjury on oath.
[77] King, Peter (March 1984) 'Decision-Makers and Decision-Making in the English Criminal Law, 1750-1800', The Historical Journal, vol. 27 (1), pp. 25-58, p. 34.
[78] Hale, Pleas of the Crown, vol. 1, London, p. 303.
[79] See pp. 53, 136-137.
[80] Hale, History of the Pleas of the Crown, vol. 2, p. 280; Dickinson, A practical guide, p. 203.

professional men who sat at petty jurors began to expect higher standards of proof.[81]

In the case of trespass or assault a defendant might be advised to come to some settlement with the prosecutor for compensating the victim, following which the court might then impose a small fine on the defendant, and the exercise of that power is examined further in chapter 5.[82] When a prosecutor failed to appear, the chairman of the bench was expected to direct the jury to acquit the defendant and order that the defendant pay the jury 12s. for the verdict, besides paying the court fees.[83] Defence costs had been permitted since 1531 in circumstance where a plaintiff failed to prosecute or the defendant was acquitted.[84] However, a defendant held in gaol would not be released until his or her gaol fees had been paid and it may have been some time before an innocent defendant was able to recover any or all of the court and gaol fees incurred from the complainant.

> The distress of prisoners … came to my notice … and the circumstance which excited me to activity in their behalf was, the seeing some, who by the verdict of juries were declared *not guilty*; some, on whom the grand jury did not find such appearance of guilty as subjected them to trial; and some whose prosecutors did not appear against them; after having been confined for months, dragged back to gaol, and locked up again till they should pay *sundry fees* to the gaoler, the clerk of assize, etc.[85]

An examination of treasury records is beyond the scope of this thesis but the existence of provisions requiring an accused to pay a fee in order to have the charges against him or her dismissed, because the complainant failed to prosecute, highlights the inequity of the judicial process for those men and women who were wrongly or maliciously accused.

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[81] Gaskill, 'The displacement of Providence', pp. 353-354.
[82] See p. 211.
[83] Stubbs and Talmash, The Crown Circuit, p. 52.
[84] 23 Hen. VIII, c.15 (1531) Act that the Defendant shall recover Costs against the Plainitiff , allowed defence costs where a plaintiff failed to prosecute or the defendant was acquitted; 4 Jac. I, c.3 (1606) Costs Act, extended the rules on costs.
[85] Howard, John (1777) The State of the Prisons in England and Wales, Warrington: William Eyres, p. 1.

Single and married women (quarter sessions)

Despite restrictions on the ability for a husband or wife to give evidence against each other, some offences such as riot, trespass and slander, were defined such that an action lay against both husband and wife jointly. By that means a husband and wife could be separately called to answer questions put to them about their part in a crime, without breaking the rules against the evidence of spouses. Following any conviction the husband became liable to pay any damages or fine awarded, because he was named as a party to the action.[86] There is no evidence from the records of the courts of Yorkshire that husbands and wives were routinely indicted together, although, when husband and wife, Harry and Jane Franck, were accused of trespass, a true bill was found against both parties. A guilty verdict is recorded only against Jane Franck with a note that she was fined 6d but in those circumstances it is likely that her husband became liable for her debt to the court.[87] If a woman was indicted without her husband she was answerable in her own right and any fine imposed could not be levied against her husband.[88]

Legal records are not detailed enough for a precise comparison of single, female offenders who lived alone with those who remained under the protection of their family or to test thoroughly the theory that married women were less likely to be accused of a crime than a single woman. Tables 2.4 and 2.5 below are a survey of outcomes for female defendants before the quarter sessions in Yorkshire during the periods surveyed. It assumes that all women are spinsters or widowed, unless they are described as 'the wife of' someone.[89]

[86] Burn, Richard (1755) Justice of the Peace and Parish Officer, vol. 2, London, p. 519.
[87] NRY York City, YK QS 1731-1739 213-217, April 1740.
[88] Burn, Justice of the Peace, vol. 2, p. 519.
[89] King, Peter (2000) Crime, Justice and Discretion in England 1740-1820, Oxford: Oxford University Press, p. 202, in which King observes that eighteenth-century criminal records appear to have recorded female offenders' marital status fairly accurately.

Table 2.4: Yorkshire quarter sessions - grand jury: married and single female defendants, 1735-1775 [90]

	Married	%	Single	%
All matters				
1049	**364**	**34.7**	**685**	**65.3**
Bill not found	78	**21.4**	108	**15.8**

Table 2.5: Yorkshire quarter sessions - petty jury: married and single female defendants, 1735-1775 [91]

	Married	%	Single	%
863	**286**	**33.1**	**577**	**66.9**
	286		577	
Transferred to K.B.	0	**0.0**	3	**0.5**
Discharged for want of prosecution	2	**0.7**	21	**3.6**
Transferred to assizes	3	**1.0**	15	**2.6**
Guilty	156	**54.5**	303	**52.5**
Partial verdict	63	**22.0**	86	**14.9**
Not guilty	59	**20.6**	140	**24.3**
Trespass	1	**0.3**	5	**0.9**
Keep the Peace	2	**0.7**	4	**0.7**
		100.0		100.0

[90] Based on the known outcomes of cases collated from extant quarter session records from the local record offices for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 18-20.
[91] Based on the known outcomes of cases collated from extant quarter session records from the local record offices for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 18-20.

Married women account for about one-third of the percentage of female defendants at quarter sessions for Yorkshire during both periods surveyed. Married women appear to have been more favoured than their single counterparts by the grand juries for the county when 21.4 per cent of bills presented against married female defendants were rejected compared to 15.8 per cent for single female defendants (Table 2.4). Different responses to married and single women by the grand juries suggest that members of the elite were more willing to extend discretionary mercy to a married woman who might have children to support. However, when they appeared before a petty jury the conviction rate of both single and married women was fairly similar with an average of 53.5 per cent of all women convicted for the full offence alleged (Table 2.5). When petty juries exercised their discretionary powers to find a partial verdict, the evidence is that married women were more often the greater beneficiaries of mercy when 22.0 per cent of married women benefitted from a partial verdict compared with 14.9 per cent of single women. However, that a higher proportion of single women than married women were fully acquitted by the petty jury demonstrates inconsistencies between the treatment of these discrete groups of women before the grand and petty juries. Such inconsistencies mirror Palk's observations on gendered discrimination,[92] although it is possible that this is simply evidence that the jury system had to some extent 'worked' to arrive at the right outcome.

Social Status

While Hay suggested that "character and social standing were explicitly germane" in determining guilt and punishment, King argued in favour of character and concluded that Hay's emphasis on social rank was "very misleading".[93] In practice, the decisions of petty jurors were likely to reflect the common values of the local elite and men of 'middling'

[92] Palk, Deidre (2006) Gender, Crime and Judicial Discretion, 1780-1830, Suffolk: The Boydell Press, pp. 13-14.
[93] Hay, Douglas (1980) 'Crime and Justice in Eighteenth- and Nineteenth-Century England', Crime and Justice, vol. 2, pp. 45-84, p. 53; King, 'Decision makers', p. 26.

status who were attendant at quarter sessions (and assizes) and whose concerns might vary depending on the particular social anxieties at national and local levels. The evidence of the social status of prosecutors and defendants is difficult to assess when status labels are vague and inconsistent. Therefore, complaints involving Richard Cross, a wealthy grocer and merchant in Pocklington, are interesting, as Cross appears as both defendant and prosecutor in a series of cases at Beverley quarter sessions between 1715 and 1763.[94] Amongst a range of other matters, Cross was ordered to keep the peace against Ann Cobb in 1719;[95] he was indicted for an assault on Richard Jackson in 1720;[96] charged with 'misbehaviour' towards Edward Barnard esquire, J.P. in 1729;[97] an assault on Mary Smith in 1733;[98] an assault on John Moody in 1740;[99] receiving stolen goods in 1735 with his two sons;[100] and defamation of a local shop keeper, Grace Chambers.[101]

Cross's history did not bar him from being deemed a suitable person to stand surety for himself and others, when his ties to the community and personal wealth were well known. When Francis Wholton, yeoman, was ordered to appear and keep peace towards Margaret Bentley, Cross and another man stood surety.[102] Similarly, Cross was one of the sureties for the recognizance for the appearance of Richard Briggam, a labourer;[103] and William Fallowfield, a blacksmith, to answer separate complaints for assault.[104] While little is known of the outcomes of the cases outlined above, their relevance lies in

[94] Neave, David (1971) Pocklington 1660-1914: a small East Riding market town, Beverley, pp. 17- 19.
[95] Neave, Pocklington, p. 19; ERY QSF/44/D/9, Easter 1719, application for relief after Richard Cross had been responsible for Ann Cobb's husband being imprisoned for 10 months in York Castle for debt, leaving her and her five children 'great objects of pity for want of bread and other necessities of life'.
[96] ERY QSF/50/B/8, Michaelmas 1720.
[97] ERY QSF/85/D/8, Midsummer 1729.
[98] ERY QSF/100/C/9; ERY QSF/103/C/23, Easter 1733.
[99] Neave, Pocklington, p. 18; ERY Beverley, QSF/130/B/11, QSV/2/9, Michaelmas 1740.
[100] ERY QSF/108/C/2; ERY QSF/109/C/17 and 19, Easter 1735.
[101] Neave, Pocklington, p. 18.
[102] ERY QSF/189/C/9, Michaelmas 1755.
[103] ERY QSF/52/C/10, Easter 1721.
[104] ERY QSF/182/C/14, Christmas 1753.

illustrating the fact that both men and women were prepared to use the judicial process to challenge a senior member of the community.

A review of other cases brought by senior men in the community suggests that the status of the defendant may have had some influence on the outcome of cases brought before the quarter sessions in Yorkshire, although the decision of a jury in such circumstances was not necessarily a foregone conclusion. In the earlier period surveyed, five indictments were brought by men with the title 'Sir' following which three men were successfully convicted and two men were acquitted. One man accused of poaching on the land of the Earl of Effingham[105] and another man accused of theft from the Earl of Malton[106] were successfully prosecuted and five cases brought by men with the courtesy title of 'esquire' resulted in convictions. In the later period surveyed, four indictments laid by men with the title 'Sir' and seven brought by 'esquires' resulted in successful prosecutions. However, an indictment by the Marquis of Rockingham against three men for the theft of hay resulted in the conviction of only one man[107] while a separate indictment against a man for the theft of grain from the Marquis was unsuccessful.[108] No records have been found in the quarter sessions records examined which indicate theft by a woman from any man of note in the community, although some would argue that all men were her 'superior' at this time. Women from poorer backgrounds were more likely to come into contact with the property of the wealthy if they were employed as a domestic servant. In that situation it is possible that minor offences were dealt with summarily within the household by some form of 'moderate correction' or the servant dismissed without a reference and effectively punished through subsequent loss of character.[109]

[105] WRY Rotherham, QS4/28 92-96, July 1736.
[106] WRY Doncaster, QS4/30 79-90, January 1744.
[107] WRY Rotherham, QS4/37 182-191, August 1771.
[108] WRY Doncaster, Don AB5/2/46, 1762.
[109] Blackstone, Commentaries, vol. 4, p. 128.

Legal representation (quarter sessions)

The passive role enforced on the majority of defendants in the pre-trial process meant that access to legal advice and/or representation was likely to be crucial to the outcome of a case when it came to the trial. Access to defence counsel was permitted in trials for misdemeanours, possibly because many misdemeanours (such as nuisances) were linked more closely to civil rather than criminal disputes.[110] Even when admitted, the role of legal counsel (barrister) was limited to arguments on points of law and they were prohibited from addressing a jury directly on the facts of the case. Increased access to legal representation was extremely important in enabling wider access to justice, however, the adversarial system operating in England and Wales was (and is) above all a market-driven system of justice, dependant on an individual's means to pay for representation. Entitlement to legal representation for all defendants, as of right, did not occur until 1836 and until then defendants in felonies were reliant on the discretion of presiding justices and judges in granting them access to legal advice and representation.[111]

There is little evidence of the presence of attorneys or counsel in the records of the lower courts in Yorkshire and evidence found by Miles of the work undertaken by attorneys in the West Riding similarly indicates that the average attorney was rarely involved in the handling of criminal cases.[112] Miles observed that most attorneys' knowledge in litigious matters extended only to straight forward proceedings and that they

[110] 7&8 Wm. III, c.3, (1695/6) The Treason Trials Act; Langbein, John H. (July 1999) 'The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: The Appearance of Solicitors', The Cambridge Law Journal, vol. 58, No. 2, pp. 314-365, p. 316.
[111] 6&7 Wm. IV, c.114, (1836) Trial for Felony Act.
[112] Baker, 'Criminal Courts and Procedure', pp. 37-38; Miles, M. (1984) ' "Eminent Practitioners": The New Visage of Country Attorneys c. 1750-1800', G. R. Rubin and D. Sugarman (editors), Law Economy and Society, 1750-1914: Essays in the History of English Law, Abingdon: Professional Books Ltd, pp. 470-503, p. 480.

frequently sought advice from and instructed counsel, even when direct representation was not possible.[113]

The verdict (quarter sessions)

Following the presentation of evidence for both parties, the presiding magistrate summarised the evidence for the petty jury and, if they were not able to give an immediate verdict in open court, a bailiff was sworn to keep them in fairly harsh conditions and on the following terms until a verdict was reached: "You shall swear you shall keep this jury without meat, drink, fire or candle; you shall suffer none to speak to them, neither shall you speak to them yourself, but only to ask them whether they are agreed".[114] Even at this stage, no directions were given to the jury on the standard of proof necessary to secure a conviction. In any event, the terms of withdrawing to consider a verdict for any length of time were such that few jurors were likely to have been anxious to engage in a lengthy debate on the quality of the evidence presented.

Petty juries were able to reach one of three possible verdicts; guilty, not guilty, or guilty of a reduced charge (partial verdict), although, as demonstrated in Table 2.6, there were many other outcomes that might follow from the presentation of a complaint to the quarter sessions, including the dismissal of the claim by a grand jury, referral of the claim to a higher court, or removal of the accused (and the problem) to his or her place of settlement.[115] It appears from Table 2.6 below that relatively few cases were discharged for want of prosecution at quarter sessions for Yorkshire where just over 2.0 per cent of men and women were eligible to be released following a complainant's failure to undertake the prosecution of their bill. However, quarter session petty juries for the county more

[113] Miles, 'Eminent Practitioners', pp. 485-490.
[114] Dickinson, A practical guide, p. 217.
[115] Baker, An Introduction to English Legal History, p. 517; Beattie, 'Crime and the Courts in Surrey', p. 175

frequently favoured women as the beneficiaries of a partial verdict (14.7 per cent) than their male counterparts (8.1 per cent) and similarly favoured women with a full acquittal (19.6 per cent) compared with men (15.8 per cent). However, evidence of the more lenient or more severe treatment of women tends to change according to the nature of the offence alleged and is best understood in relation to specific offences, as undertaken in chapters 4-7.

Table 2.6: Verdicts at Yorkshire quarter sessions, 1735-1775 [116]

Indictments	**M**	**%**	**F**	**%**
5017	**4001**	**79.7**	**1016**	**20.3**
	4001		**1016**	
Discharged for want of prosecution	89	**2.2**	23	**2.3**
Not guilty	631	**15.8**	199	**19.6**
Guilty	1827	**45.7**	459	**45.2**
Partial verdict	323	**8.1**	149	**14.7**
Keep the peace	112	**2.8**	6	**0.6**
Not tried where multiple indictments	15	**0.4**	1	**0.1**
Traverse	75	**1.9**	10	**1.0**
Referred to assizes	49	**1.2**	18	**1.8**
Referred to KB	81	**2.0**	3	**0.3**
Other proceedings [117]	84	**2.1**	8	**0.8**
Unknown outcomes	715	**17.9**	140	**13.8**
		100.0		100.0

Gendered differences are evident in the use of legal challenges through a traverse or referral to the King's Bench, as both procedures required legal argument to be presented in defence of that challenge. Therefore, it is no surprise to find in Table 2.6 that a higher percentage of men (1.9 per cent) than women (1.0 per cent) in Yorkshire were able to take advantage of those procedures, when men were more likely than women to be financially

[116] Collated from extant quarter session records from the local record offices for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 18-20.
[117] Trespass as a civil matter, removal from parish.

independent in order to exercise that choice. For similar reasons, issues concerning the capacity of a woman to be bound on her sole recognizances to keep the peace may explain the relative absence of such orders against female offenders.[118] Table 2.6 includes data relating to cases with unknown outcomes found in the quarter session minutes, which is likely to include cases that were satisfied by an earlier order to keep the peace, agreements to abide by trading regulations, or discharged because the matter creating a nuisance had been removed. Other unknown outcomes may hide indictments that were successfully traversed, matters referred to the King's Bench, cases abandoned by their prosecutors, and other matters determined under a J.P.'s civil powers.[119] Other cases would have been discharged when a defendant 'submitted' to the court and paid a voluntary fine as the result of a private settlement between the parties or where the victim was satisfied by the accused publicly begging his or her pardon.[120] In such circumstances, the higher proportion of unknown outcomes for men (17.9 per cent) than for women (13.8 per cent) is likely to reflect the greater ability of men to offer financial bonds or financial settlements.

Another hypothesis put forward in this thesis is that some indictments did not proceed to trial when the accused was separately convicted on another indictment at the same sessions. It was often the case that when multiple indictments were presented against the same defendant, justice was deemed to be served by a successful conviction on just one indictment. When James Johnson was convicted at quarter sessions for the theft of a coat valued at 10d. he was sentenced to transportation for seven years.[121] He was not tried on two other indictments served against him for theft of other items similarly valued below the capital threshold. Equally, when Margaret Backhouse was convicted at quarter sessions

[118] See pp. 68, 76-77; Blackstone, Commentaries, vol. 4, Oxford: Clarendon Press, p. 251.
[119] See pp. 105-106.
[120] Crittall, Elizabeth (editor) (1982) The Notebook of William Hunt, 1744-1749, Wiltshire Record Society, vol. xxxvii, Wiltshire: Wiltshire Record Society, pp. 6-15, in which Crittall outlines the summary jurisdiction exercised by Hunt sitting as a sole justice and in petty sessions. It includes references to the settlement of claims of assault and minor thefts which did not involve issues of theft for commercial gain.
[121] WRY Pontefract, QS4/38 194-215, April 1775.

for the theft of various items of household linen from the Governors of the hospital for deserted children at Ackworth, a decision was taken that she was not to be tried for a similar offence committed on a separate occasion from the same defendants.[122] The hospital officials were unlikely to have wanted to spend money gathered from local rates in order to pursue a second prosecution when a swift and satisfactory outcome had already been achieved. Those who prosecuted Backhouse had already extended mercy to her by keeping the indictment below the capital threshold for theft from commercial premises. Nevertheless, her gender was not enough to influence the sentencing justices to go so far as to reduce her sentence to a fine or whipping, even though the partial verdict by the petty jury valued the goods stolen at 10d, and she was sentenced to transportation for seven years. Other similar cases found in the court records indicate that this procedure was followed in Yorkshire as a matter of convenience when there was little to be gained from proceeding on the other indictments, although the other offences were likely to have been taken into account in determining that the appropriate sentence was transportation, rather than a fine.[123]

Sentencing (quarter sessions)

Magistrates were empowered to sentence men and women convicted of a first felony to a term of imprisonment or transportation. Those found guilty of a misdemeanour could be punished with a fine, whipping, the pillory, branding, a term of imprisonment, ordered to find sureties for good behaviour, or a combination of any of those options, although records from the quarter sessions for Yorkshire make no reference to the use of branding as a punishment in the county. A gendered analysis of sentencing at quarter sessions (and assizes) can be best understood in relation to the specific offences they relate

[122] WRY Rotherham, QS4/35 278-288, July 1767.
[123] Taking other offences into account, when sentencing for a separate offence, remains as standard practice today when sentencing at the end of a criminal trial.

to and as between the assize and quarter sessions for similar types of offending, as undertaken in chapters 4-7. Nonetheless, that does not prevent some general observations being drawn from the sentencing practices of the lower court.

Table 2.7: Sentencing at Yorkshire quarter sessions, 1735-1775. [124]

Convictions	M	%	F	%
2705	**2143**	**79.2**	**562**	**20.8**
	2143		**562**	
Transportation	192	**9.0**	57	**10.1**
Publicly whipped	133	**6.2**	79	**14.1**
Privately whipped	65	**3.0**	53	**9.4**
Whipped	277	**12.9**	127	**22.6**
Fine	963	**44.9**	148	**26.3**
Fine and whipped	1	**0.0**	0	**0.0**
Gaol	11	**0.5**	5	**0.9**
House of correction	41	**1.9**	25	**4.4**
Hard Labour	6	**0.3**	10	**1.8**
House of correction and whipped	9	**0.4**	9	**1.6**
Gaol/House of correction and fine	17	**0.8**	10	**1.8**
Gaol/House of correction and pillory	2	**0.1**	7	**1.2**
Pillory	12	**0.6**	8	**1.4**
Keep the Peace	111	**5.2**	6	**1.1**
Enlist in services	19	**0.9**	1	**0.2**
Submitted and fined	284	**13.3**	17	**3.0**
%		100.0		100.0

The level of fines imposed or duration of prison sentences ordered were determined at the discretion of the sentencing justices (or assize judge) and the quantum might vary according to the aggravation cause, the social status of the parties, or 'other'

[124] Based on the known outcomes of cases collated from extant quarter session records from the local record offices for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 18-20.

circumstances.[125] The largest fines noted in the quarter sessions record for Yorkshire appear to have been reserved for male offenders (none of whom were described as 'labourers'). In 1735, Richard Skidbury, a yeoman, was fined £40 for a fraud,[126] while William Collings, a gentleman, was fined £50 for an assault on another man in 1744.[127] In 1772 William Brown of Leeds, a pawnbroker, was ordered to pay a fine of £40 for receiving stolen goods, being a copy of the 'book of common prayer', valued at only 10d. Brown was fortunate in avoiding a sentence of transportation for fourteen years under the Act of 1718, nevertheless, the fine imposed reflected his ability to pay, the association with his profession as receivers of stolen goods and an element of sacrilege in dealing with religious material.[128]

As demonstrated in Table 2.7 above, the most common form of punishment was by way of a fine, applied primarily for the punishment of assaults and misdemeanours. It was a reflection of the type of crimes committed by men and women that 44.9 per cent of all male convicts were punished solely by a fine compared with 26.3 per cent of all female convicts.[129] An order to pay a fine did not require the on-going element of additional sureties that may have prevented some women from benefiting from an order to keep the peace, although, both orders were in the nature of a contract with the court. A small percentage of fines are linked to a term served in the house of correction or gaol, although is likely that many more men and women were committed to gaol or house of correction until such time as any fine was paid. Otherwise, because fines were paid in court, orders to pay a fine could be settled immediately by a man or woman of sufficient means. The earlier enquiry by the petty jury, as to the personal wealth of any convicted felons,[130]

[125] Blackstone, Commentaries, vol. 4, p. 371.
[126] ERY Beverley, QSV/2/9, Midsummer 1735.
[127] ERY Beverley, QSV/2/9, Michaelmas 1744.
[128] WRY Leeds, QL/1/9 251, 252, 253, 254, 272, November 1772.
[129] See Tables 5.4 and 5.5.
[130] Dickinson, A practical guide, p. 185.

provided sentencing judges with the information they required to determine whether or not a fine was an appropriate punishment (at least for a felony), according to the means of the individual convict.

Before 1780, and as illustrated in Table 2.7, orders to serve a term in gaol were rarely used as a punishment for a specific offence, while houses of correction were more commonly associated with orders requiring hard labour, other physical chastisement and the detention of vagrants. Combining a fine with a term of imprisonment allowed justices of the peace to both punish an individual offender with a fine, while eliminating the source of a local nuisance by removing a person, albeit temporarily, from the community. In 1774, an unmarried woman was convicted of keeping a disorderly ale house and fined £5, with an additional requirement that she serve a term of one year in the house of correction.[131] The conviction of another unmarried woman for the same type of offence the following year resulted in a fine of £5 and a term of twenty-one months in gaol.[132] The keeping of disorderly and unlicensed alehouses was not a problem unique to eighteenth-century Yorkshire and Walker observed similar concerns expressed in court records for seventeenth-century Cheshire.[133] In those circumstances, lengthy periods in prison not only served as a punishment but possibly provided an effective end to a disorderly house.

Whipping was the most common sentence for minor thefts in Yorkshire and during the periods surveyed about 90 per cent of orders for whipping relate to convictions for burglary, theft and other felonies. The higher percentage of women than men sentenced to be whipped (Table 2.7) reflects the type of crimes committed by women, where they tended to be accused of thefts and the like as opposed to assaults and other nuisances

[131] NRY York City, York QS 4 1771-87 64-67, October 1774.
[132] ERY Hull, Hull C CQA/2/5 54-55, April 1775.
[133] Walker, Crime, Gender and Social Order, pp. 219-212.

(Table 2.1). Whipping was traditionally carried out in public and orders commonly directed that the offenders were to be stripped to the waist and led by a cart along a public street, where they would be flogged "until his [or her] back be bloody". It was intended to shame the offender and served as a deterrent to others from committing similar crimes.[134] Shoemaker noted that a decline in issues concerning public insult between 1600 and 1800 was mirrored by a parallel decline in "community-based shame punishments" in London.[135] He argues that the looser community bonds in the metropolis meant that shaming punishments were less effective; however, if people were not intimately connected through a tight-knit community, shame lost much of its meaning. The evidence from the records for Yorkshire may be explained in the context of this argument, when public whipping and use of the pillory continued after the period observed in London and its metropolitan suburbs.[136]

The high percentage of women ordered to be whipped should not be surprising, despite statutory directions that 'lesser' punishments should not be 'cruel or unusual',[137] as the use of flogging only reflected contemporary attitudes to physical chastisement, as witnessed in responses to crimes involving domestic violence.[138] Married women represent about one half of all women ordered to be flogged during the periods surveyed and it is possible that it was considered a 'merciful' sentence for the convicted woman and of greater benefit to the parish, in that it was immediate and did not necessitate a married woman with children being removed from the care of her children through an order for

[134] Blackstone, Commentaries, vol. 4, p. 370.
[135] Shoemaker, Robert (2000) 'The decline of Public Insult in London: 1600-1800', Past and Present, vol. 169, pp. 97-131.
[136] Shoemaker, Robert (2004) 'Streets of Shame? The Crowd and Public Punishments in London, 1700-1820' in Simon Devereaux & Paul Griffiths, eds, Penal Practice and Culture, 1500-1900: Punishing the English, Basingstoke: Palgrave Macmillan, pp. 232-284, eBook, p. 236.
[137] The Bill of Rights, 1 Wm & M., sess. ii, c.2 (1688): An Act declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown. It provided that: 'excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted'.
[138] See p. 217.

transportation or a term in imprisonment; neither did it commit her to find money to pay a fine, which might also result in a term of imprisonment until it was paid.

An average of 14.1 per cent of female convicts were sentenced to be publicly whipped during the periods surveyed, compared to only 6.2 per cent of male convicts at quarter sessions for Yorkshire, when the punishment must have been a cause for the greater humiliation for women than men. The proportion of women sentenced to be whipped is actually much more dramatic than these figures suggest, when all the categories of whipping are added together, as 22.6 per cent of male convicts and 47.7 per cent of female convicts were ordered to be whipped at quarter sessions. It is not possible to conclude whether a general sentence of 'whipped' resulted in a public or private whipping, although some justices were more explicit than others in requiring that the punishment be carried out in public, that a man or woman should be stripped to the waist first, and if blood ought to be drawn. It is possible that where the sentencing justice was silent on the matter, that the method of extracting punishment was left to the practice of the particular gaol or house of correction responsible for carrying out the sentence.

Although the numbers are small, there were a higher proportion of female convicts (2.6 per cent) sentenced to the shaming punishment of the pillory, compared with 0.7 per cent of male convicts. Between 1735 and 1745, the pillory was used for a number of undefined misdemeanours, although three women (or 27.8 per cent of 11 orders) were ordered to be placed in the pillory for separate offences of 'keeping a disorderly house' and one woman for fraud. Between 1765 and 1775 four women and one man (or 26.3 per cent of 19 orders) were similarly sentenced for keeping a disorderly house and five men (or 26.3 per cent) for gaming offences. Other offences resulting in an order to be placed in the pillory during the same period included matters of conspiracy, trading offences, theft and

fraud. The dominance of shaming punishments in respect of the pillory may, therefore, be explained in relation to the type of offence, where public shaming served as a warning to any like-minded people engaged in similar occupations and allowed an exchange of important messages between those in authority, offenders and onlookers.[139] As Kilday and Nash observed, this public exposure enabled the community to exact its own punishment as the individual came face to face with the community's opinion of them.[140]

King observed a decrease in the use of physical punishments in Cornwall (after 1750) and Morgan and Rushton reported similar outcomes in the Newcastle sessions.[141] However, although the authors of each of those studies observed a decline in the absolute number of sentences involving whipping in the late eighteenth century, they noted an increase in public whipping after 1775. King, Morgan and Rushton further observed that the renaissance of whipping was 'highly gendered' and that by 1780 the public whipping of women had practically been abandoned.[142] This may not necessarily have been the case in Yorkshire where a higher proportion of female convicts were publicly flogged than male convicts, at least until 1775.

Public punishments brought both shame and dishonour on the individual, as was the intention,[143] and demonstrated a highly ritualistic and theatrical pageant aimed at the deterrence from crime of the assembled public, as well as the punishment of the

[139] Nash, David S., Anne-Marie Kilday, (2010) Cultures of shame: exploring crime and morality in Britain 1600-1900, Basingstoke: Palgrave Macmillan, eBook, pp. 26, 69.
[140] Nash, David S., Anne-Marie Kilday, (2010) Cultures of shame: exploring crime and morality in Britain 1600-1900, Basingstoke: Palgrave Macmillan, eBook, p. 70.
[141] King, Peter (2006, first edition) Crime and Law in England, 1750-1840: Remaking Justice from the Margins, Cambridge: Cambridge University Press, pp. 192-193 and p. 274-275; Morgan, Gwenda and Peter Rushton (1998) Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718-1820, Florence, KY, USA: Routledge, p.130.
[142] King, Crime and Law in England, 1750-1840, p. 193; Morgan and Rushton, Rogues, Thieves, pp.130-131. The public whipping of women was abolished in 1820 (1 Geo. IV. c.57, An Act to abolish the Punishment of public Whipping on Female Offenders) and that of men ended in the early 1830s, though it was not formally abolished until 1862.
[143] Blackstone, Commentaries, vol. 4, p. 370.

individual.[144] The concept of corporal punishment came under increasing attack during the course of the eighteenth century by philosophers and legal reformers, such as Jeremy Bentham, who favoured the use of model prisons.[145] However, committal to gaol did not generally feature as a sentencing option during the early modern period; prisons were used for holding men and women awaiting trial or punishment, or pending settlement of a civil debt and sentences specifically stating hard labour in a house of correction were generally used to punish the poor and vagrants who committed misdemeanours.[146] As appears to have been the case in London, few convicts at Yorkshire quarter sessions were sentenced to a period of imprisonment without the addition of some other penalty,[147] as 4.0 per cent of male convicts were sentenced to a term of imprisonment, with or without another element of punishment, compared with 11.7 per cent of female convicts similarly sentenced (Table 2.7), although, women were more commonly detained in a house of correction, rather than a gaol.

Overcrowding in local prisons was often a problem in a system which had not accepted a term in prison as a standard sentence following a criminal conviction, yet, justices continued to remand prisoners to gaol pending trial or until other sentences could be enforced following conviction.[148] Consequently, the opportunity to transport prisoners overseas enabled local justices to relieve the pressure on local gaols:

> At times, This country is now so full of Felons that we can hardly subsist; and the last week (at the quarter sessions held at Pontefract) we had no less than 24

[144] Spierenburg, Pieter 'The Body and the State' (1995**)** in Norval Morris and David J. Rothman (editors) The Oxford History of the Prison: the Practice of Punishment in Western Society, Oxford: Oxford University Press, pp. 44-70, p. 47.
[145] Ryan, Alan (editor) (1987) Utilitarianism and other essays: J.S. Mill and Jeremy Bentham, London: Penguin Books, p. 33.
[146] Emsley, Clive, Tim Hitchcock and Robert Shoemaker, 'Crime and Justice - Punishments at the Old Bailey', Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0) accessed 21 January 2012.
[147] Emsley, Clive, Tim Hitchcock and Robert Shoemaker, 'Crime and Justice - Punishments at the Old Bailey', Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0) accessed 21 January 2012.
[148] See pp. 62-63.

> Indictments against those people, who were committed to the House of Correction since Christmas last; not Four months since the last sessions: Twenty two of this number were convicted & 5 of them transported, being old offenders, & 3 others would have suffered the same Fate had there not been some particular reasons to induce us to spare them this time.[149]

While the assize courts were often concerned with the use of transportation as an alternative sentence to the death penalty, quarter session justices were more generally concerned with orders for transportation as a sentencing option for non-capital property offences. Beattie found that no one was sentenced to transportation from the quarter sessions for Surrey between the passing of the Act in 1718 and 1750, although in the following four year period, 1750-1753, almost two thirds of those convicted of petty larceny were ordered to transportation for seven years.[150] The evidence from Yorkshire (Table 2.7) is that a slightly higher percentage of women (10.1 per cent) than men (9.0 per cent) were ordered for transportation from the quarter sessions, which is repeated in the records of the assizes. This tends to suggest a tendency towards the harsher sentencing of women considered to be particularly undesirable. Nevertheless, it is not possible to conclude absolutely that women were treated more harshly than their male counterparts if they had been shown some earlier exercise of mercy which caused their case to be kept within the jurisdiction of the lower court and out of the range of capital charges. If a woman sentenced to transportation 'pleaded her belly' the matter would be remitted to the assize court as only assize judges had the authority to call for a jury of matrons to determine whether or not a female convict were pregnant. The female defendant would be remanded in gaol in the interim period.[151]

[149] SP 36/127 f. 4, letters and papers, 13 May 1754, extract from a letter of Sir Rowland Winn. Nostell,of Pontefract to the secretary of state.
[150] Beattie, 'Crime and the Courts in Surrey', p. 177.
[151] See p. 73; Herrup, The Common Peace, pp. 47-48; Blackstone, Commentaries, vol. 4, pp. 387-388.

The immediate effect of an order for transportation or gaol might mean the removal of the bread winner from a family or the mother of several children and that, in either case, had an impact on the community of rate payers (including the jurors) who would be called upon to support those left behind by any increased demand on the poor rate. It is impossible to assess whether such concerns influenced would be prosecutors who were quite possibly ratepayers themselves. When John and Isabel Hudson were sentenced to transportation for seven years by the justices for Thirsk in 1742, the justices ordered that their goods should be seized and sold by overseers of the poor, to support their children who remained in Yorkshire.[152] Nevertheless, it is not surprising to find that the number of men or women ordered for transportation did not rise above 10 per cent of those sentenced in the lower court.

Ordinary merchant ships were used to transport convicts during the period of transportation to America and there was no fixed arrangement with any particular shipping master.[153] The standard term of transportation ordered from the quarter sessions was for a period of seven years, although a few orders to transportation for fourteen years were passed on men or women convicted for receiving stolen goods. No evidence has been found of any calendars monitoring the removal and return of those transported by the local courts in Yorkshire. It was up to the individual convict to make their own arrangements for the return journey, while the *Custos Rotulorum* or legal clerks would have been called on to verify whether any person had returned before the term of their order had expired. The court records are relatively silent on the matter of reprieves from orders for transportation

[152] QSM/104 182, NRY Thirske, April 1742.
[153] 6 Geo. I, c. 23 (1720) Act for the further Preventing Robbery, Burglary and other Felonies and for the more effectual Transportation of Felons, empowered local authorities to contract with merchants to transport felons; East Yorkshire Family History Society, (1984) Transportation from Hull and the East Riding to America & Australia, taken from the Quarter Session Records: John Bottrill of Hull, master engaged by Kingston upon Hull quarter sessions (KHQS), August 1757 and April 1758; George Foster of Hull, master engaged by KHQS January 1759; John Fenwick of Hull, master engaged by KHQS, January 1761; John Knowles of Hull, master engaged by KHQS, December 1765.

but it is possible that some orders for transportation were not carried out. When Hannah Nicholson (wife of William Nicholson of Cottingworth) was charged with the theft of cloth from a shop, a partial verdict followed and she was sentenced to transportation for seven years.[154] It is unlikely that the sentence against Nicholson was enforced because only two years later the quarter sessions records for Beverley record that a Hannah Nicholson (wife of William Nicholson of Cottingworth) was found guilty of the theft of a goose and sentenced to be whipped.[155]

It was sometimes the case that male suspects 'excused' themselves from a trial by volunteering to serve in one of the armed forces or, alternatively, male convicts could be sentenced to serve and by this means the court might exile undesirable characters. It has been observed that this sentence was most frequently applied in the eighteenth century during periods of war.[156] Therefore, it is no co-incidence that orders for enlistment during the earlier period surveyed were made from 1740 onwards, coinciding with the War of Austrian Succession. In contrast, England was not engaged in any major conflicts during the later period surveyed, when only two such orders were made. While service in either the army or navy was reserved to men, one woman was offered the opportunity to be released from the house of correction if she agreed to go into domestic service, presumably on the basis that she would be under the control of another person while employed.[157]

Administration and legal costs.

As continues to be the case, the role of magistrates in the administration of justice greatly reduced the number of matters that would otherwise have been dealt with at the

[154] TNA ASSI 45/21/4 ff. 52 B-H, assizes, city of York, March 1740; TNA ASSI 41/3, Crown Minutes, York, March 1740.
[155] ERY QSV/2/9, quarter sessions, Beverly, Christmas 1737.
[156] Emsley, Clive, Tim Hitchcock and Robert Shoemaker, 'Crime and Justice - Punishments at the Old Bailey', Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0) accessed 21 January 2012;
[156] Rawlings, Crime and power, pp. 24 and 35-39.
[157] QS NRY Richmond, January 1740, Mary Wray of Barton, her offence is not stated.

assizes. Despite criticisms of an untrained judiciary at quarter sessions, the reality was that many justices had some training in law or were otherwise well-educated and, in any event, acted under the supervision of a legal clerk (see Appendix 2.1**)**.[158] A number of Justices such as Burn, Stubbs and Dickinson produced books on procedure and precedents which were widely circulated to other justices of the peace, together with notebooks produced locally for use by members of the office of the legal clerk.[159] Nevertheless, despite the growing burden on magistrates to keep up-to-date with developments in the law, it was not until the end of the eighteenth century that justices of the peace were systematically supplied with complete copies of the statutes of the realm.[160]

Christopher Tancred's essay on the problems in the legal process (1727) was based on his own experiences as a magistrate in Yorkshire and in it he identified administrative delays and the cost of prosecutors as being the main cause of grievance with the judicial system.[161] Although recovery of prosecution costs had been permitted for many years for successful prosecutors where damages were awarded, in 1752 the payment of prosecution and witnesses expenses became more widely available, albeit only in the event of a successful prosecution.[162] Before 1755 there was an important correlation between costs and fines, when fines were customarily set at three times the prosecutor's costs, plus an

[158] Local papers, such as the York Courant, regularly carried advertisements for new editions of legal text books, and reference works on case law and statutes by means of which lawyers, justices and legal clerks would have been able to keep up-to-date with changes in the law.
[159] TNA ASSI 43/9: (Northern Circuit) notebook containing precedents and analyses of points of law (c. mid-eighteenth century to early nineteenth century); TNA ASSI 34/55/4 and 5: Precedent books, misdemeanours and felonies (Home Counties) (c. eighteenth to nineteenth centuries; TNA ASSI 34/55/5: Precedent book (felonies indictment book) (undated).
[160] Devereaux, Simon (2005) 'The promulgation of the statutes in late Hanovarian Britain, in David Lemmings (editor) The British and their Laws in the Eighteenth Century, Suffolk, England and Rochester, New York: The Boydell Press, pp. 80-101, p. 81.
[161] Tancred, An essay for a general regulation of the law, p. 2.
[162] Statute of Gloucester, 6 Edw., I (1277) 'Where damages shall be recovered, there costs also'; 25 Geo. II c.36 (1752) An Act for better preventing Thefts and Robberies, allowed prosecution costs to be paid in the case of a successful conviction for felony; 27 Geo II c.3 (1754) An Act for securing the expenses of Constables … and for allowing the Charges of poor Persons bound to give Evidence against Felons: permitted courts to pay the expenses of poor witnesses; 18 Geo. III c.19 (1778), An Act for the payment of costs to parties, made it possible to apply for the repayment of unsuccessful prosecution expenses, including those incurred at petty and quarter sessions.

amount for damages; in which case the issue of costs would have been particularly relevant to a convicted person.[163] Before that date prosecution costs were recoverable from the defendant but following the Acts of 1752 and 1754, costs were recovered from the crown, rather than the defendant directly, although through the *estreat* process the crown might attempt to recoup its costs from a convicted prisoner.[164] Prosecutors would have been eager to take advantage of the new provisions as, for example, in 1754 when costs of £1 18s 8d were awarded following the successful prosecution of Ann Nightingale for horse theft.[165]

As continues to be the case today, the cost of prosecutions often greatly exceeded the loss suffered. In 1766, costs of £1 5s. were reimbursed to Ann Cholmley following the successful prosecution of Eleanor Campbell for the theft of cloth valued at 2s.[166] At the same sessions, 3s. were paid to each of the two witnesses following the successful prosecution of Margaret Thompson for a felony relating to household goods valued at 1s. 8d.[167] It was very important in a largely pre-banking age that individuals maintained their credibility and reputation in the business community by being seen to protect their business interests, through the prosecution process if necessary, whatever the outcome.[168] Although the cost of proceedings would have been the same, whatever the gender of the party, a dependant woman was reliant on the willingness of her father or husband to meet the costs of proceedings on her behalf.

The procedure for referral to the King's Bench on a point of law or by way of judicial review of a decision of a lower court was the same at quarter sessions and assizes and

[163] 6&7 Wm. III, c.20 s. 6 (1694/5) An Act for the King's most gracious general and free pardon, provided that any person pardoned under this Act shall recompense the victim by a payment of their treble damages, plus legal costs of bring the suit and a fee to the Crown of £10; Oldham, 'Truth-Telling in the Eighteenth-Century', p. 111.
[164] See glossary; Dickinson, A practical guide, p. 185.
[165] 25 Geo. II c.36 (1752); TNA ASSI 45/25/1/106 (1754): list of costs for the prosecution of Ann Nightingale alias Ann Taylor.
[166] QSM/106 14, NRY York Castle, July 1766: Campbell was sentenced to be transported for seven years.
[167] QSM/106 14, NRY York Castle, July 1766: Thompson was sentenced to be transported for seven years.
[168] King, 'Decision-Makers', pp. 25-58, p. 34; Walker, Crime, Gender and Social Order, p. 206.

proceeded by way of a writ of *certiorari*.[169] The procedure added to the expense of proceedings as arguments on points of law required professional representation. Any complaint concerning the actions of the presiding judge, or other court official, was hampered by the fact that the only records of proceedings that could be referred to were those taken by the presiding magistrate or circuit judge.[170] Some historians assert that high court judges were tolerant of not only ignorant or mistaken judgements, but also of abusive and even malicious conduct.[171] As a result, poorer men and women who were wrongfully convicted could not hope to prosecute their claims without substantial legal and financial assistance. Conversely, it is possible that some parties abused their rights to refer a case to King's Bench by using the procedure as a delaying and vexatious tactic to force the other party to settle or withdraw their complaint.[172] Procedures at King's Bench detracted from the exercise of local justice as it dispensed with the requirement of the preliminary review of the information by a grand jury and allowed 'gentlemen' and peers of the realm to demand that they were tried by a jury of their peers.[173] Nevertheless, while a wealthy man might seek to be tried before a 'special' jury of his peers, a wealthy woman might only demand that her case be determined by a jury of men of similar social status, she would not have been entitled to be judged by her own sex.

[169] Stubbs and Talmash, The Crown Circuit, p. 20; Sharpe, J.A. (1999, first edition 1984) Crime in Early Modern England, 1550-1750, London and New York: Longman, p. 22 on King's Bench as a court of review.
[170] Blackstone, Commentaries, vol. 3, p. 42; Blackstone, Commentaries, vol. 4, pp. 263-264; Dickinson, A practical guide, pp. 39-40, 217.
[171] Hay, Douglas (2002, first edition) 'Dread of the Crown Office: the English magistracy and King's Bench, 1740-1800', in Landau, N. (editor) Law, Crime and English Society, 1660-1830, Cambridge: Cambridge University Press, pp. 19-45, pp. 19-45, p. 21; Skyrme, Sir Thomas (1991) History of the Justice of the Peace, vol. 2, England to 1689-1989, Chichester: Barry Rose Publications, pp. 69-72.
[172] Hay, Douglas (2005) 'Legislation, magistrates, and judges: High law and low law in England and the empire', in Lemmings (editor) The British and their Laws, pp. 59-79, pp. 67-68; Paley, Dr Ruth, History of Parliament Trust (24 February 2012) 'Uncovering the History of Certiorari', Institute of Advanced Legal Studies, unpublished; Mares, Henry (24 February 2012) 'Criminal Informations of the Attorney General in King's Bench and Star Chamber', Institute of Advanced Legal Studies, unpublished.
[173] Hay, D. (1989) 'Prosecution and Power: Malicious Prosecution in the English Courts, 1750-1850', in Hay, D. and F. Snyder (eds), Policing and Prosecution in Britain 1750-1850, Oxford: Clarendon Press, pp. 343-395, p. 347.

Conclusion (quarter sessions)

Many men and women charged with having committed a criminal offence benefited from the exercise of discretion by those concerned in the judicial processes, although, the same discretionary powers operated (to some extent) to the detriment of all parties but primarily to the disadvantage of the unrepresented defendant.[174] Discretionary powers were circumscribed by the legal status of each offence and the opportunities for clemency relied on the exercise of discretion in interpreting the definitions of the crime alleged, the rules of evidence and procedure, and sentencing options. For example, the failure to prosecute a case committed for trial was an offence punishable by imprisonment as it served to undermine the judicial process, yet there is little evidence that those who failed to appear were required to forfeit their recognizances to prosecute. To that extent both victims and magistrates were complicit in the punishment of many suspects who were remanded in gaol or the house of correction pending trial, without giving the accused an opportunity to clear his or her name.

The wide range of cases retained within the jurisdiction of the lower court reflected contemporary attitudes to activities which were deemed 'criminal', those which were socially acceptable and points to a general sense of unease with the number of offences which attracted a capital sentence (Table 2.1).[175] The evidence of the committal process is that, while grand juries were reluctant to dismiss the majority of complaints, they were more likely to reject a bill of complaint presented against a man than a woman (Table 2.2). Because defendants were excluded from committal hearings before the grand jury, it is possible to infer, overall, the exercise of subjective and gendered interpretations of criminal behaviour by jury members, which acted to the detriment of female defendants.

[174] Brewer, J. and J. Styles (editors) (1980) An ungovernable people: the English and their law in the seventeenth and eighteenth centuries, London: Hutchinson, p. 18.
[175] Styles, J. (1980) 'Our traitorous money makers: the Yorkshire coiners and the law, 1760-83' in Brewer, J. and J. Styles (editors) An ungovernable people: the English and their law in the seventeenth and eighteenth centuries, London: Hutchinson, pp. 172-249, p. 245; Sharpe, Crime in Early Modern England, pp. 199-200.

However, when broken down by married and single women, married women tended to benefit by the private considerations of grand juries, whereas, petty juries were more even handed in the treatment of married and single women when their verdicts were given in the public arena (Table 2.5). Lack of financial independence was also a greater handicap for women, demonstrated by the situation illustrated in Table 2.3, where few men and fewer women challenged the complaints made against them.

The interpretation of common law and statutory rules of evidence and procedure by those involved in the judicial process operated to limit the number of successful proceedings and allowed 'pious' juries to give partial verdicts or acquit defendants. As illustrated in Table 2.6, women were more frequently beneficiaries of partial verdicts and full acquittals than men, which is consistent with other evidence for the county of the more lenient treatment of women.

Once leniency had been exercised through a partial verdict the trend was towards the more equal sentencing of men and women, although the sentencing of women varied according to the nature of the offence for which they were charged. While a greater percentage of men than women were punished by way of a fine (Table 2.7), the practice was to impose fines for acts of violence which were more commonly committed by men. That men also tended to receive the higher level fines reflected the reality that men tend to commit the more serious offences of that nature. Nevertheless, a married woman could be deemed both culpable for an offence and liable to any fine imposed in her own right without recourse by the victim to her husband. There is little comparative work on gendered attitudes to sentencing in the quarter sessions of the eighteenth century but observations by some historians that the physical punishment of women was losing its legitimacy, is not

necessarily borne out from the accounts of the quarter sessions for Yorkshire.[176] The higher percentage of women than men sentenced to be whipped reflected the greater tendency for women to be indicted for theft for which an order to be whipped was a common punishment. The continued sentencing of male and female defendants in Yorkshire to be flogged in public throughout the periods surveyed goes against evidence from other circuits and, together with evidence that a higher proportion of female convicts were sentenced to be placed in the pillory, demonstrates the role of shaming in the punishment of women.

The counter-argument in support of corporal punishment was that it was instant and did not require the payment of a fine by a person who only stole due to insufficient funds in the first place and it did not require his or her removal from home except, perhaps, for a short period between arrest and trial. As the alternative to whipping was likely to be transportation for seven years, whipping may have been deemed the lesser of two evils. Nevertheless, while orders for transportation applied to no more than 10.0 per cent of sentences imposed by the Yorkshire quarter sessions, a slightly higher percentage of women than men were ordered for transportation (which is repeated in the records of the assizes). While that outcome at first points to the harsher sentencing of those women whose offending was deemed particularly detrimental to society, it is also possible that such orders reflect the more lenient treatment of women, where a theft which should have attracted a capital sentence was reduced to a lesser offence, ensuring the transportation of some women, rather than a capital sentence.

There were significant differences in the type of crimes committed by men and women and, as men often committed more serious offences than women, those gendered

[176] King, Crime, Justice and Discretion, p. 287; Morgan and Rushton, Rogues, Thieves, pp.130-131.

differences influenced verdicts and sentences. As the criminal jurisdiction of the lower court increasingly tended to determine complaints of misdemeanours and petty larcenies, felonies which attracted a capital sentence, such as murder, robbery, highway robbery, burglary and the more serious acts of theft, perjury and forgery were determined at the assizes.[177]

[177] See Appendix 3.2, TNA SP 36/147/225, draft directions to assize judges going on circuit from the reign of George II, (1727-1760).

Chapter 3. The judicial process (3): the experience of men and women at assize trials in the North of England.

In the eighteenth-century English courtroom, the path toward the truth was strewn with formidable obstacles.[1]

When Hester Norton was charged with domestic burglary and felony at the assizes to the City of York she was found guilty of theft to the value of 50s. but not guilty of burglary (a partial verdict) and sentenced to death for the capital felony.[2] The presiding judge, Mr Justice Carter, ordered a respite from execution of the sentence, 'favourable circumstances' having been found. Carter' recommendation for mercy was successful and Norton's sentence remitted to transportation for 14 years.[3] Norton's case illustrates the difficulties a single woman charged with a capital offence at the assizes might face: nevertheless, whether or not she was unrepresented in court she was deemed worthy of the mercy of the petty jury who reduced the charges against her and by the assize judge who granted a respite of the sentence and recommended her to the Crown as an object of mercy. This chapter examines the experiences of men and women appearing before the assizes, where many were under threat of a capital conviction for an increasing number of statutory offences.

Constitution of the court and its officers

The assize courts existed within the circuit framework and were presided over by two high court judges (otherwise known as commissioners of the peace) who were sent out of London and visited each county within a circuit twice a year during the lent vacation (February/March) and the long vacation (July/August) where they dealt with a range of

[1] Oldham, James (Spring, 1994) 'Truth-Telling in the Eighteenth-Century English Courtroom', Law and History Review, vol. 12 (1), pp. 95-121, p. 119.
[2] TNA ASSI 41/2, TNA ASSI 41/3, York City, March 1736. See pp. 40, 45 for previous references to the case of Hester Norton.
[3] TNA SP 36 /39/59, TNA SP44/83/163-164, confirmed at the assizes for the City of York, August 1736.

civil and criminal matters assigned to them by the county justices.[4] Due to severe weather conditions during the winter months, the northernmost counties on the Northern Circuit were generally visited only once a year, although, Yorkshire was visited in both the summer and winter circuits during the eighteenth century.[5] A table of visiting assize judges during the periods surveyed is set out in Appendix 3.1, demonstrating that the same judges tended to visit the Northern Circuit on a fairly regular basis and providing evidence of continuity in the administration of justice.[6]

Sitting with the sheriff and other officers of the county, the commissioners of the peace were required to preside over five judicial commissions: the first commission gave jurisdiction to one assize judge, sitting alone, over matters of civil law; the second authorised two circuit judges (or a *quorum* of one judge and the clerk of assize)[7] to try all questions of fact before a jury in the county in which the offence was committed;[8] the third extended their jurisdiction to hear and determine cases of treason, felonies and misdemeanours;[9] the fourth authorised them to try every prisoner in the gaol, for whatever offence they had committed;[10] and the fifth directed them to do all things necessary to preserve the peace, suppress crime and arrest offenders.[11] The expectations of the work to

[4] Some boroughs of England also ran their own Borough Sessions where the borough charter permitted. Cockburn, J.S. (1985) Calendar of Assize Records: Home Circuit Indictments Elizabeth I and James I, Introduction, London: HMSO, pp. 1-2.
[5] Cockburn, J.S. (1972) A History of English Assizes 1558-1714, Cambridge: Cambridge University Press, p. 19
[6] A record of the assize judges for the Northern Circuit during the periods surveyed is set out in Appendix 3.1, where the names of the circuit judges identified as presiding over criminal proceedings are highlighted in yellow. Most notable amongst the circuit judges attending the northern circuit was William Blackstone, author of the four volume 'Commentaries on the Laws of England'. Despite a note on one website that: 'In the Common Pleas, Blackstone operated under a civil jurisdiction rather than a mixed civil and criminal one', the records from the assizes for the county of York show that Blackstone operated in criminal courts: Wikipedia, William Blackstone, http://en.wikipedia.org/wiki/William_Blackstone#cite_note-pres255-84, various sources cited, accessed 25 March 2012.
[7] Cockburn, Calendar of Assize Records, pp. 19-20.
[8] Known as the commission of *nisi prius.*
[9] Known as the commission of *oyer and terminer.*
[10] Known as the commission of gaol delivery.
[11] 2 Edw. III, c.3 (1328) Statute of Northampton; Stubbs, W., G. Talmash (1749, second edition) The Crown Circuit Companion, London: J. Worrall, pp. 2-3; Cockburn, Calendar of Assize Records, pp. 18-19. The list

be undertaken by an assize judge on circuit are illustrated in the 'draft directions to Judges going on the Circuits', set out in Appendix 3.2, in which they were directed to punish any offence ranging from the use of profane language, excess drinking and gambling to robbery and murder.[12] They were also required to ensure that the rule of law was followed in the provinces.[13] Therefore, a guidance note in the Crown Minute Books that, "It's always advisable to indict the wife with the husband as it may come out upon the evidence that the wife was by herself and alone when the felony was committed", was likely to have been given as much for the education of the legal clerk and justices of the peace as for the process of the specific indictment.[14]

All the justices of the county were (in theory) bound to be present with the judges at the commission of assize or otherwise pay a fine.[15] Attendance of any J.P. who had taken statements from witnesses appearing before the court was essential, in order that they might be cross-examined on any confession made before them which was not repeated in open court. Therefore, Pleasance Watson J.P. was fined 5s for his failure to attend the trial of the coincidently named Anne Watson at the county assizes (or send his clerk in his stead).[16] His absence meant that he could not be examined on the evidence of the defendant's statement, as a result of which Anne Watson was acquitted. Some historians have observed that assize sessions tended to last for only two to three days in each assize town, with the busiest courts hearing between twenty and thirty criminal cases a day.[17] However, as illustrated in Appendix 3.1, the visiting commissioners to the Yorkshire

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of commissioners could be quite lengthy and comprised the two judges sitting with several gentlemen of the county (often senior justices of the peace), the clerk of assize and his associates.

[12] TNA SP 36/147/225, from the reign of George II, (1727-1760). draft directions to assize judges going on circuit.

[13] See Appendix 3.2.

[14] TNA ASSI 41/3, Crown minutes, York, July 1740: the trial of Mary and Samuel Johnson for the theft of cloth: Judge James Reynolds, Baron of the Court of Exchequer, presiding.

[15] Stubbs and Talmash, The Crown Circuit, p. 5.

[16] TNA TNA ASSI 41/3, Crown minutes, York, March 1748.

[17] Rabin, D.Y. (2004) Identity, Crime and Legal Responsibility in Eighteenth-century England, Basingstoke: Palgrave Macmillan, p. 28; King, Peter (2000) Crime, Justice and Discretion in England 1740-1820, Oxford: Oxford University Press, chapter 7.

assizes might spend in excess of a week in the County, presiding over the city assizes for between one and two days, an average of five days to a week at the county assizes and (on occasion) a day or two at Kingston upon Hull. On several occasions the visiting judges were accompanied by a third judge, a serjeant-at-law, who presided over some of the criminal proceedings.[18] Therefore, judicial proceedings on the Northern Circuit may not always have been quite as cursory as some have suggested, although some of their time would have been spent in the exercise of their civil powers as representatives of the court of King's Bench. The judicial procedures described in chapter 2 in relation to the quarter sessions were largely mirrored at the assizes; therefore, observations on appointments, procedures and processes are not repeated in this chapter, except where relevant differences occur.[19]

Work of the assizes

As at quarter sessions, theft and burglary were the crimes most frequently referred to the Yorkshire Assizes (see Table 3.1), accounting for 43.6 per cent of all crimes alleged against men and 47.5 per cent of all crimes alleged against women during the periods surveyed. The level of homicides alleged against all female offenders at 17.9 per cent of female crime generally represents what proved to be a series of unsuccessful indictments for infanticide, considered further in chapter 4. In contrast, allegations against men for homicides represented only 5.9 per cent of all alleged crimes committed by men. The level of non-fatal assaults at only 5.4 per cent of all complaints against men and 2.8 per cent of all complaints against women is not unexpected when improvements to the administration of criminal work between quarter sessions and assizes during the course of the eighteenth century required that minor assaults remain within the jurisdiction of the lower court.

[18] TNA ASSI 41-42.
[19] Stubbs and Talmash, The Crown Circuit, p. 12; Cockburn, Calendar of Assize Records, pp. 8-9.

Table 3.1: Work of the Yorkshire Assizes, 1735-1775 [20]

Total indictments	**M**		**F**	
2236	**1918**	**85.8**	**318**	**14.2**
	1918		**318**	
Theft and burglary	836	**43.6**	151	**47.5**
Robbery, highway robbery and pickpocketing	99	**5.2**	16	**5.0**
Homicide	113	**5.9**	57	**17.9**
Assault	104	**5.4**	9	**2.8**
Rape and sodomy	34	**1.8**	0	**0.0**
Breach of the peace	3	**0.2**	0	**0.0**
Bigamy	6	**0.3**	2	**0.6**
Coining, fraud, forgery	119	**6.2**	6	**1.9**
Perjury	40	**2.1**	6	**1.9**
Misdemeanours [21]	47	**2.5**	3	**0.9**
Poaching and trespass	54	**2.8**	1	**0.3**
Riot	136	**7.1**	18	**5.7**
Felony	5	**0.3**	0	**0.0**
High Treason	1	**0.1**	0	**0.0**
Return from transportation	6	**0.3**	0	**0.0**
Arson and criminal damage	6	**0.3**	3	**0.9**
Unspecified and trading	309	**16.1**	46	**14.5**
Total [22]		100.0		100.0

The general conclusion that can be drawn from the evidence set out in Table 3.1 is that allegations of male offending were spread out more evenly across a wider range of crimes than female offending. There is lower proportion of women's alleged offending in just about all categories, save for the higher proportion of female alleged offending in the categories of theft and homicide, the latter being accounted for by infanticide accusations as considered in chapter 4. A higher proportion of indicted men than indicted women were accused of coining, fraud and poaching, while both sexes are seen to participate in riots, for

[20] Based on extant records relating to the assizes for Yorkshire found in TNA ASSI and SP series described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-18.
[21] Misdemeanours includes: trading offences, nuisance, neglect of parish duties and other matters described as 'misdemeanours'.
[22] The minute books also include additional matters against communities for upkeep of the highway. The indictments are numerous but are not included in the tables created for this thesis.

reasons considered in chapter 7. Although the percentage of men and women charged with highway robbery and robbery (which includes pickpocketing) is fairly equal at about 5.0 per cent of both genders, it was more often the case that men were concerned in highway robberies,[23] while women were almost exclusively charged with pickpocketing. Beattie suggested that an association between pickpocketing and prostitution (at least in London) may account for any lack of sympathy with the victims of that offence, which may explain why some cases were referred to the assizes.[24] The unspecified cases in Table 3.1 are likely to be made up of a range of minor offences, such as nuisances, orders to keep the peace and misdemeanours.

There are variations in the nature of the offences brought before the town and county assizes which make it difficult to assess whether any differences in the social composition of a grand jury affected the outcome of their deliberations. The number of grand jurors sworn in for the county of York was generally no more than twenty and, for example, in July 1736 the grand jury consisted of one baronet and eighteen esquires, where offences presented to them most commonly concerned thefts of livestock, grain or cloth.[25] In contrast, the assizes for the city of York more frequently determined charges of theft and burglary where the grand jury for the same period consisted of six merchants, six hoastmen, two bakers, two brewers, two tanners, two tailors, two goldsmiths, a smith and a cooper.[26] The make-up of the grand juries, therefore, tended to serve the interests of those offended against in the separate communities of town and country and local knowledge held by jurors was likely to influence their role in the decision-making process.

[23] Beattie, J.M. (2002, first published 1986) Crime and the Courts in England 1660-1800, Oxford: Oxford University Press, p. 155.
[24] Beattie, Crime and the Courts, pp. 180-181. 48 Geo. III, c.129 (1808), The Larceny Act, removed the death penalty for relatively minor crimes such as pick pocketing.
[25] TNA ASSI 41/3, Crown minutes, York, July 1736.
[26] TNA ASSI 41/3, Crown minutes, York, July 1736.

Because court officers were meant to destroy rejected bills, individual bills of complaint that are extant for the Yorkshire Assizes are not necessarily complete.[27] Nevertheless, of the few bills marked 'ignoramus' from the assizes for Yorkshire between 1735 and 1745, sixty-four bills (88.9 per cent of bills not found) concerned male defendants and only eight (11.1 per cent of bills not found) related to female defendants, which generally agrees with the ratio of male to female defendants referred to the assize sessions (see Table 3.1). Even though deliberations of the grand jury were held *in camera*, evidence that more than a passing consideration was given by grand juries to the evidence before them is illustrated in the case of William Spinks. Three indictments for horse theft by Spinks were found 'true', while the bill for a fourth allegation for the same offence was found 'not true'. Clearly the finding of one or two bills did not mean that another complaint containing similar allegations was automatically accepted as valid.[28]

The Coroner's Court played an important part in the assize process in identifying any named person deemed culpable of the death of another and the guilt or innocence of which had to be determined by trial at the assizes.[29] The same medical examiners who gave evidence at the inquest were required to give evidence at the assizes and, although their findings were not binding on the assize jury, their failure to appear at the assizes to present that evidence would be fatal to the prosecution case in establishing the cause of death.[30]

[27] Rent bills for the neighbouring Palatinate Court of Durham have survived and a review of those records may provide an insight to the work of the grand jury for that county.
[28] TNA ASSI 44/55, York county, March 1740.
[29] See p. 45; Baker, J.H. (2007, fourth edition, first published 1971) An Introduction to English Legal History, Oxford: Oxford University Press, pp. 505-506.
[30] See p. 179.

Legal representation (assizes)

While trial by jury provided a system for peaceable and regulated dispute settlements, the accessibility of justice to the ordinary man or woman would have been hampered by the general rule against legal representation for those accused of felony.[31] Hawkins writing in 1728 acknowledged the role of legal counsel for defendants in capital cases on points of law, with *caveats* as to the extent of their involvement in matters of facts and pre-trial preparation:

> It is not safe for a Man to be Counsel or Solicitor to one in prison for a capital Crime, in order to prepare him for his Trial, without the leave of the Court: But with such Leave Prisoners are sometimes indulged the Assistance of Counsel, not only to advise them in Prison, but also to stand by them at the Bar; but it is said, that in Strictness they ought not to be prompted as to Matters of Fact, nor have the Assistance of Papers drawn up by Counsel to prepare them for their Trial.[32]

By the second half of the century, Blackstone went further and questioned the appropriateness of denying a person charged with a capital offence access to full legal advice: "For upon what face of reason can that assistance be denied to save the life of a man, which is yet allowed him in prosecutions for every petty trespass?" [33] Given that Blackstone was, on occasion, one of the presiding judges on the Northern Circuit, it is possible that he allowed greater access to legal representation than permitted by some other judges, while research by Miles provides evidence that counsel in the West Riding of Yorkshire were active in providing legal advice and limited representation.[34]

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[31] See pp. 103-104.

[32] Hawkins, William (1739, third edition, first published 1715) A treatise of the pleas of the Crown: or, a system of the principal matters relating to that subject, digested under their proper heads, vol. 2, London, p. 401.

[33] Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Public Wrongs, vol. 4, Oxford: Clarendon Press, p. 349.

[34] Miles, M. (1984) ' "Eminent Practitioners": The New Visage of Country Attorneys c. 1750-1800', G. R. Rubin and D. Sugarman (editors), Law Economy and Society, 1750-1914: Essays in the History of English Law, Abingdon: Professional Books Ltd, pp. 470-503, p. 495; Lemmings, David (2000) Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century, Oxford: Oxford University Press, p. 57.

In theory, defence counsel were permitted to cross-examine prosecution witnesses but restricted from addressing the jury directly, although as early as 1727 Christopher Tancred noted the means by which such limitations were overcome by advocates for both sides. "At an Assizes, 'tis usual to hear the Parties and their Attorneys instructing the Common Juries and Witnesses with the Matters that are to come before them, (and almost in as plain Language,) as the Prompters use behind the Scenes to the Actors in the Play-House".[35] Blackstone similarly observed that counsel were in practice allowed to attend a capital felon at the bar, to "instruct him what questions to ask or even to ask questions for him, with respect to matters of fact".[36] Together, the observations of Hawkins, Blackstone and Tancred highlight the discretion exercised by presiding judges in allowing greater access to legal representation than might be expected under the rules of common law.[37]

Nevertheless, uncertainties as to the rights of a defendant to legal representation are illustrated by a note found in the minute book for Yorkshire in 1739, where it states that the use of counsel by defendants was not allowed in a case of high treason for counterfeiting, despite provisions in the statute of 1696 allowing for the use of defence lawyers at trials of other treasons against the state.[38] Josiah Fearn was allowed legal representation at his trial for the murder of Thomas Graves in 1748, where counsel for the Crown were Mr Serjeant Bootle, Mr Crowle and Mr Wilson, junior, of Leeds, while Fearn was represented by Mr Place, Recorder of York, Mr Stanhope and Mr Stables.[39] Access to

[35] Tancred, Christopher (1727) An essay for a general regulation of the law, and the more easy and speedy advancement of justice, London: printed for Stephen Austen, p. 57; Hostettler, John (2009) A History of Criminal Justice in England and Wales, Hampshire: Waterside Press, pp. 206-207.
[36] Blackstone, Commentaries, vol. 4, p. 350. See also, Lemmings, Professors of the Law, p. 211.
[37] Although the Treason Trials Act 1696 (7 & 8 Wm. III, c.3 s. 1) allowed legal counsel to appear for the defence, defendants accused of a felony were not allowed full access to representation by counsel until the Prisoner's Counsel Act, 1836.
[38] TNA ASSI 41/3, Crown minutes, York, 9 August 1739, re. The Treason Trials Act, 1696.
[39] Anonymous (1749, second edition) The Trial of Mr. Josiah Fearn, etc., York: printed by Cæsar Ward. The 'legal teams' assembled for the Crown accord with current practice, using a serjeant-at-law (senior counsel), junior counsel (barrister) and an attorney (solicitor). The defendants' team was similarly constructed, although a recorder carried less seniority than a serjeant. Lemmings, Professors of the Law, p. 57, notes that John Stanhope called to the bar in 1727 and practiced for 40 years in Horsforth, near Leeds.

legal advice was not just about representation in court, but also about the more efficient handling of a case to reach a swift conclusion. Miles noted that at least 73.0 per cent of all assize court actions handled by John Eagle (an attorney in the West Riding) were settled, one way or another, within one legal term and only 16.0 per cent of cases lasted in excess of two terms.[40] Nevertheless, despite reforms in the payment of prosecution costs, concerns continued to be expressed throughout the course of the century as to the ability or willingness of some victims of crime to take the time and bear the costs involved in bringing a prosecution, when compared to the possibility of some other form of private settlement.[41]

While the number of applications for permission to acquire legal representation may have increased during the course of the eighteenth century, it has been estimated that the victims of the crime continued to conduct more than 80.0 per cent of their own criminal prosecutions until at least 1780.[42] However, until universal access to legal advice and representation was permitted unrepresented defendants continued to be disadvantaged by the failure of the legal system to advise them of the specific charges against them until the day of the trial, their inability to prepare a defence based on the evidence contained in witness statements they had not seen and inexperience in cross examining witnesses at trial.

[40] Miles, 'Eminent Practitioners', p. 495.
[41] Colquhoun, Patrick (1796, second edition) A Treatise on the Police of the Metropolis, London: printed by H. Fry, for C. Dilly, in the Poultry, p. 248.
[42] Langbein, John H. (2005, first published 2003) The Origins of Adversary Criminal Trial, Oxford: Oxford University Press, pp. 18, 115-120; King, Crime, Justice and Discretion, p. 223; Emsley, Clive, Tim Hitchcock and Robert Shoemaker, 'Crime and Justice - Trial Procedures', Old Bailey Proceedings Online, www.oldbaileyonline.org, version 6.0, accessed 12 February 2012.

One general rule in criminal prosecutions was that an offence should be prosecuted in area where it was committed.[43] However, when Samuel Oglethorp was accused of the theft of a horse from Edward Coulston in Westmorland, both the case and Oglethorp were removed to the City of York because of the greater convenience to Coulston who lived "a great distance" from Westmorland.[44] Oglethorp spent 18 months in gaol until his trial at York in March 1739, when he was acquitted of the charge against him. In different circumstances, prosecution costs in the prosecution of Ann Nightingale in 1753 for horse theft included the expenditure of 10s. 6d. for bringing the prosecution witness a distance of 25 miles for the trial.[45] Unless there was evidence of a failed or malicious prosecution, a defendant would have been unable to recover his or her witness expenses and no defendant would have succeed had he or she applied to have proceedings removed to a place of greater convenience for them.[46]

The trial process and rules of evidence

The pre-trial and trial processes at the assizes were almost identical to that at quarter sessions, although, there were some variations because of the capital nature of some of the complaints presented to the higher court. Once an indictment was passed by the grand jury, the accused was brought into the court and the charge against him or her read out (the arraignment). Prisoners were asked to plead to the charges put to them and the vast majority entered a plea of 'not guilty', following which a trial would take place. There was no 'right' to remain silent because of an assumption that a defendant ought to be able to demonstrate his or her innocence through his or her response to the prosecutor's questions.

[43] 12 Hen. II, cc. 1-5 (1166) The Assize of Clarendon, shifted the locus of criminal trials to the particular province where crimes committed; Langbein, Irwin L. (1933) 'The jury of presentment and the coroner', Columbia Law Review vol. 33, New York: Columbia University Press, pp. 1329-1361, pp. 1329-1330.
[44] ASSI 41/3, Crown Minute Book, York City, March 1739.
[45] TNA ASSI 45/25/1/101-106 (1753), witness statements and list of costs for the prosecution, Castle of York, Summer Assizes 1753
[46] 14 Geo. II, c.17 (1741) Act to Prevent Delay of Cause after Issue Joined, provided that a plaintiff was liable to pay the costs of a defendant if he or she were unable to show good cause why a case did not proceed to trial; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Private Wrongs, vol. 3, Oxford: Clarendon Press, p. 357.

The alternative, following a 'guilty' plea to a capital charge, was that the assize judge had no option but to sentence the prisoner to death, with no opportunity for the accused to present any evidence in mitigation.[47]Any mitigating evidence was introduced at the sentencing stage when the judge determined the appropriate punishment, considered whether the defendant was entitled to the benefit of clergy for a first felony, or whether they could put forward a recommendation for mercy following a capital conviction.[48] It is unclear how legal clerks managed the court records in order to identify repeat felons, as few minute books reviewed contained a separate list of offenders and, therefore, is a matter for further research.[49]

Because of the infrequency of assize sittings, some defendants might have suffered more by pleading not guilty than if they accepted the consequences of an early guilty plea, even when they believed themselves innocent of the charges against them. When publican, Jonathan Chadwick, pleaded not guilty to a charge of assault he was held in gaol for one year until his case was heard, following which he changed his plea to guilty and was fined 1s.[50] As at quarter sessions, a person's ability to mount a convincing prosecution or defence was jeopardised by practices which were reliant on evidence given under oath by third party witnesses, against a background of concern as to the competency of the victim and accused to give reliable evidence.[51] Third party evidence was clearly problematic when driven by the incentive of an accomplice to save him- or herself from a capital sentence or transportation. When Arthur Kaye and Jonas Hinchcliff were jointly suspected of sheep-stealing in 1743, Hinchcliff gave evidence against Kaye who was found guilty

[47] Burn, Richard (1755) Justice of the Peace and Parish Officer, vol. 1, London, p. 214.
[48] Cockburn, A History of English Assizes, pp. 128-131; Beattie, Crime and the Courts, pp. 430-449; Emsley, Clive, Tim Hitchcock and Robert Shoemaker, 'Crime and Justice – Trial Procedures', Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0), 10 July 2012.
[49] TNA ASSI 41/2: Gaol book, York and Yorkshire (1718-1736) included an alpha listing of offenders with folio references to the relevant session/s in which they appeared.
[50] TNA ASSI 41/3, Crown minutes, York.
[51] See pp. 95-96; Oldham, 'Truth-Telling in the Eighteenth-Century', pp. 95-121, p. 96.

and sentenced to death while Hinchcliff was released without further charge.[52] The admission of accomplice evidence for the prosecution was particularly controversial in the assize courts, when their evidence might determine the outcome of a capital indictment. Whether for financial reward or the opportunity to escape death or transportation, any system which permitted the admission of prejudiced evidence was inequitable and inevitably resulted in an increasing rate of perjury against possibly innocent defendants.[53] Therefore, restrictions on the use of uncorroborated evidence were introduced from about 1740 onwards as the 'corroboration rule' evolved to require corroborative evidence to the testimony of an accomplice before a jury could convict the principle offender.[54]

The same restrictions applied to the evidence of rape victims, so that they too were required to provide an independent witness to the rape.[55] When Artaxerxes Harper was accused of raping Mary Wilson, eye-witnesses evidence for the prosecution was provided by similarly named William Wilson. The possibility that he was a relation of the victim was not addressed in his witness statement which was presented as the information of an independent observer.[56] When the evidence of accomplices, eye-witness and family members might be trusted, while the direct testimony of the accused or victim could be excluded as the biased testimony of 'interested parties', the contradictions as to who might or might not be relied on to give credible evidence are obvious.

In the absence of a professional prosecution service, the role of the judge was crucial in the way evidence was presented to the jury. The assize judge cross-examined witnesses

[52] TNA ASSI 45/22/3/56A, 1743, recognizance of Jonas Hinchcliff to give evidence against Arthur Kaye; Whiting, C.E. (editor) (1952) 'Two Yorkshire diaries: the Diary of Arthur Jessop and Ralph Ward's Journal', Yorkshire Archaeological Society, Record Series, vol. 117, Harrogate, pp. 76-77, entries for 25 January and 13 February 1743.
[53] Hostettler, J., and R. Braby (2010) Sir William Garrow, Hampshire: Waterside Press, p. 31.
[54] Langbein, Origins of Adversary Criminal Trial, pp. 203-205; Oldham, 'Truth-Telling in the Eighteenth-Century', pp. 95-121, pp. 107-109.
[55] East, E.H. (1803) A Treatise of the Pleas of the Crown, vol. 1, London: J. Butterworth, p. 439.
[56] ASSI 45/29/3/118-122, f. 122 circa April 1770, information of William Wilson, clothier.

and prisoners, he was able to address the jury during the course of the trial and he made the decision when to close the hearing of testimony.[57] The rules of admissibility of indirect or 'hearsay' evidence were well established by the eighteenth century, so that pre-trial statements and the use of evidence given by one person of what had been said by another, were precluded from production as evidence in a trial, although the same rules did not apply to pre-trial confessions of the defendant which could be presented as evidence in court.[58] Nonetheless, Oldham observed from the records of the Old Bailey that hearsay evidence was often admitted in eighteenth-century trials and it was doubtless admitted at other assizes as well.[59]

It has been suggested that the emerging rules of evidence were used as an escape route from the exigencies of the 'Bloody Code', but the full benefit of those rules would have been limited to those who could afford legal representation.[60] For example, understanding the nature of the 'character rule' and being able to apply it to prevent the prosecution from introducing evidence of a defendant's bad character and former crimes, would have been extremely difficult for the unrepresented defendant.[61] Langbein concluded, from an examination of Old Bailey sessions papers, that there were lapses in the application of the bad character rule which continued until the use of legal representation became more widespread [62] Nevertheless, judges and legal clerks were not oblivious to the rules of evidence as illustrated in the minute books for Yorkshire which, for example, includes a direction on the admissibility of a previous indictment as evidence against a defendant. "If a record of felony is produced without a recital of the judgement it's not sufficient to take

[57] Cockburn, Calendar of Assize Records, p. 109.
[58] East, A Treatise of the Pleas of the Crown, vol. 1, p. 214. See p. 94, an examining justice could expect to be cross-examined on the taking of a statement before it was admitted as evidence in court.
[59] Oldham, 'Truth-Telling in the Eighteenth-Century', pp. 95-121, p. 104.
[60] Cornish, W.R. and G. de N. Clark (1989) Law and Society in England 1750-1950, London: Sweet and Maxwell, pp. 34-35; King, Crime, Justice and Discretion, p. 17; Beattie, Crime and the Courts, pp. 356-357; Baker, An Introduction to English Legal History, p. 510.
[61] Langbein, Origins of Adversary Criminal Trial, pp. 190-196, in which he observed that use of the 'character rule' becomes apparent in criminal trials from the mid-seventeenth century.
[62] Langbein, Origins of Adversary Criminal Trial, pp. 195-196.

of the person's evidence".[63] Yet again, it appears that the presiding circuit judge was making a legal point for the benefit of both the defendant and the education of court officers.

The order of hearings at the assizes was that prisoners charged with a felony were tried first and the jury's verdict declared once all the other cases presented to the same jury in that sitting had been heard. The jury did not generally retire to consider their verdicts rather they huddled in the court room before announcing their decisions on each of the cases.[64] The practice of multiple hearings on similar matters must have resulted, more often than not, in a rather cursory consideration of the evidence and one must question the extent to which the jurors accurately recalled the evidence of each case in order to adjudicate on all the cases before them.[65] Nonetheless, not all trials in the early eighteenth century were perfunctory enquiries without the benefit of legal representation and consideration of the evidence. The trial of William Bower in 1742 for a highway robbery was reported to have commenced at 5 p.m. and lasted, for eleven hours, which would mean that the trial continued until 4 a.m. the following morning.[66] Given the nature of the capital charge and length of the trial, it is likely that Bower had legal representation.

The verdict (assizes)

After hearing witness evidence, the duty of the judge was to summarise the evidence for the jury and, if they were not able to give an immediate verdict at the bar, a bailiff was sworn to keep them on similar terms as at quarter sessions and until a verdict was

[63] TNA ASSI 41/3, Crown minutes, York, 9 August 1739.
[64] Cockburn, Calendar of Assize Records, pp. 65, 110; Beattie, J.M. (1977) 'Crime and the Courts in Surrey 1736-1753', in J.S. Cockburn (ed), Crime in England 1550-1800, London: Methuen & Co Ltd, pp. 155-186, p. 174.
[65] Rabin, Identity, Crime and Legal Responsibility, p. 28; King, Crime, Justice, and Discretion, chapter 7.
[66] TNA ASSI 45/22/2/34B-34E.

reached.[67] As at the quarter sessions, no specific directions were given to the retiring jury as to the standard of proof from which to base their verdict, yet, many men and women charged with theft or burglary were dependent on the finding of a partial verdict by a sympathetic jury to escape a capital conviction and all capital felons on the exercise of the benefit of clergy.

During the periods surveyed 6.7 per cent of indictments of men and 8.7 per cent of indictments of women were discharged for want of prosecution and the use of the committal process without any record of a subsequent trial provides evidence of the continuing, and gendered, use of committal proceedings by victims of crime to punish those they believed had offended against them. Table 3.2 includes data relating to cases with unknown outcomes found in the assize records, where the outcomes for 16.9 per cent of male defendants and 11.0 per cent of female outcomes are unknown. As considered in chapter 2, there are a range of reasons to explain the high proportion of unknown trial outcomes, including the possibility of private settlements between the parties, where men were more likely than their female counterparts to be able to offer a financial settlement.[68] At the same time, 6.0 per cent of male defendants and 3.2 per cent of female defendants were committed to gaol until their trial at a later date when a delay occurred in the prosecution or transportation process.

[67] Chitty, Joseph (1819) A practical treatise on the criminal law: containing precedents of practical forms, with notes etc., vol. 4, Philadelphia: Edward Earle, p. 317; Dickinson, William esq., (1820, second edition) A practical guide to the quarter sessions and other sessions of the peace, adapted to the use of young magistrates, and professional gentlemen, at the commencement of their practice, London: J. And W.T. Clarke, p. 217. See p. 104: one difference between quarter session and assize jurors was that assize jurors were allowed a candle when they retired to consider a verdict.

[68] See p. 106.

Table 3.2: Verdicts at assizes (petty jury), 1735-1775 [69]

		M	%	F	%
Total	2162	**1853**	**85.7**	**309**	**14.3**
Indictments		**1853**		**309**	
Discharged for want of prosecution		125	**6.7**	27	**8.7**
Not guilty		521	**28.1**	123	**39.8**
Guilty		581	**31.4**	65	**21.0**
Partial verdict		176	**9.5**	46	**14.9**
Remain in gaol on commitments		112	**6.0**	10	**3.2**
Other disposal [70]		24	**1.3**	4	**1.3**
Unknown		314	**16.9**	34	**11.0**
			100.0		**0.0**

Conviction rates of both men and women were lower at the assizes than at quarter sessions,[71] when defendants of either sex might face charges for a potentially capital offence, so that only 31.4 per cent of men and 21.0 per cent of women indicted at the assizes for Yorkshire were convicted for the full offence they were originally charged with (Table 3.2). Women were again the greater beneficiaries of a partial verdict (14.9 per cent) than their male counterparts (9.5 per cent) during the periods surveyed. Overall, there was a mixed response to female defendants at the assizes in Yorkshire; on one hand the evidence is of a greater desire by grand jurors to require women (rather than men) to answer complaints about their conduct. In contrast, petty jurors were increasing reluctant to convict women, and when they did convict, they were likely to pass a partial verdict. This outcome provides evidence of the particular reluctance of jurors to convict a woman of a capital offence. Such discrepancies may be explained by the fact that the elite of local society sitting as a grand jury debated the merits of a claim in private, where women who

[69] Collated from extant records relating to the assizes for Yorkshire found in TNA ASSI and SP series, described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-18.
[70] Cases removed to assizes or King's Bench, defendant removed to place of settlement, defendant not tried on multiple indictments, bills not found and orders to keep the peace.
[71] See Table 2.5.

appeared to have breached the social norms of female behaviour might be more harshly condemned. In contrast, the middling classes who made up the petty juries may have been more sympathetic (or perhaps more reluctant) in the public arena to similarly condemn a woman who might be perceived to have acted from need.

Judges' powers were restricted so that they could not take action against a jury that failed to reach the verdict they wanted, although, they could require a jury to reconsider their verdict.[72] For that reason, Lord Abney had little choice but to accept the decision of an independent jury in 1743 who failed to find Mary Ingleson guilty of infanticide, despite Abney's directions on the evidence that concealment of the body of the infant was evidence of murder.[73] Although the verdict of a trial jury was not unimpeachable, it was not general practice for a trial judge in Yorkshire to set aside a perverse verdict.[74]

Sentencing (assizes)

While juries determined guilt or innocence, an assize judge exercised the right to sentence those convicted of a non-capital offence, or offer a respite from a capital conviction pending an appeal for mercy to the Crown after determining any entitlement to benefit of clergy and hearing any pleas in mitigation. Although it lay in the power of the petty jury to avoid a capital sentence by passing a partial verdict, 35.6 per cent of male convicts were capitally convicted, compared with 18.4 per cent of female convicts (Table 3.3). That data provides evidence of the reluctance of petty juries to pass the ultimate sentence on women, which is not mirrored in the sentencing of male defendants. The entries for transportation in Table 3.4 below are for men and women sentenced directly to transportation, as opposed to others who were reprieved for transportation from a capital sentence (see Table 3.3 below). Relatively few men or women were sentenced directly to

[72] Beattie, Crime and the Courts, pp. 407-410.
[73] TNA ASSI 41/3, Crown minutes, York, 12 March 1743, note by legal clerk of Lord Abney's direction.
[74] Blackstone, Commentaries, vol. 4, pp. 354-355.

transportation for fourteen years, which was the usual term imposed following a conviction for receiving stolen goods.[75] That was the case in Yorkshire, where all the female defendants and four of the five men sentenced to transportation for fourteen years had been convicted of receiving stolen goods, while the fifth man's conviction was for the theft of cloth from a bleaching croft (which involved an element of burglary).

Table 3.3: Sentencing at Yorkshire Assizes), 1735-1775 [76]

	M	%	F	%
797	**699**	**87.7**	**98**	**12.3**
Convictions	**699**		**98**	
Death penalty	249	**35.6**	18	**18.4**
Transportation 14 years	5	**0.7**	3	**3.1**
Transportation 7 years	223	**31.9**	44	**44.9**
Transportation, period unspecified	40	**5.7**	8	**8.2**
Gaol/House of Correction	57	**8.2**	6	**6.1**
Fine only	78	**11.2**	6	**6.1**
Branding only	22	**3.1**	4	**4.1**
Pillory or whipping	25	**3.6**	9	**9.2**
		100.0		100.0

Transportation for seven years was the most common sentencing option for first time felons and it is likely that the orders for transportation for an unspecified period also fall within that category. That being the case, it is likely that 37.6 per cent of male convicts and 53.1 per cent of female convicts were sentenced directly to transportation for seven years. These figures possibly reflect the greater incidence of theft by female offenders, for which transportation was the usual sentence. Fines were the most common form of punishment

[75] 4 Geo. I, c.11 (1718) Act for the further Preventing Robbery, Burglary and other Felonies and for the more effectual Transportation of Felons.

[76] Based on the known outcomes of cases collated from extant records relating to the assizes for Yorkshire found in TNA ASSI and SP series, described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-18.

for an assault in Yorkshire, so that 11.2 per cent of convicted men and 6.1 per cent of female convicts were punished by way of a fine only, reflecting the greater tendency for men to be convicted of crimes of violence.

King observed from the records of the Old Bailey and Home Circuit (1782-1827) that "overall ... women were less likely to be convicted and more likely to be given a range of sanctions which both judge and jury considered to be more lenient".[77] Likewise, at the assizes for Yorkshire, 13.3 per cent of convicted women and only 6.7 per cent of convicted men were punished by the use of corporal punishment in the form of branding, whipping or the pillory (Table 3.3), which mirrors issues on the whipping of women considered in chapter 2.[78] In contrast to the quarter sessions, few sentences of imprisonment from the assizes included an additional order for whipping or hard labour, although a requirement that the prisoner be branded before leaving gaol was commonly applied to both sexes.

Capital convictions and mercy

For those found guilty of a capital offence the sentencing options were limited because judges had no power to vary a capital sentence, although, they had a wide discretion to grant a reprieve for first and second time convicts for a felony and, in some circumstances, they could inflict additional penalties.[79] Additional penalties concerned the method by which the capital sentence was carried out and men convicted of murder or highway robbery were occasionally hanged in chains near the scene of the crime. By that means justice was seen to be done when the most heinous crimes were committed.[80] When Thomas Lee was convicted in 1768 of the murder of another man, Lee was sentenced to

[77] King, Peter (2006, first edition) Crime and Law in England, 1750-1840: Remaking Justice from the Margins, Cambridge: Cambridge University Press, p. 175.
[78] See pp. 111-112.
[79] Blackstone, Commentaries, vol. 4, p. 370.
[80] Cockburn, Calendar of Assize Records, p. 124

hang in chains near Grassington Gate and his body to be dissected and anatomized.[81] However, a presiding judge had no discretion when it came to sentencing a woman convicted of petit treason (the murder of her husband) and the law required that she should be sentenced to burn at the stake.[82]After Ann Sowerby was convicted of the murder of her husband in 1767 she was sentenced to burn at the stake, although it is likely that she was strangled by her executioner before her body was burned.[83] As Blackstone observed, "there being very few instances (and those accidental or by negligence) of any person's being embowelled or burned till previously deprived of sensation by strangling".[84]

A number of historians contend that the attitudes of those who believed that the purpose of public executions was to inspire or terrorize the public to lead lawful and godly lives were, by the eighteenth century, pitted against those who feared that public punishment presented a threat to social order.[85] They argue that from the mid-eighteenth century the 'respectable classes' began to withdraw from attending public executions, leaving a rowdy audience who revelled in the public spectacle, as exemplified in the work of men such as William Hogarth.[86] Nevertheless, it was an inevitable outcome of the 'Bloody Code' that some prisoners were hanged, either as an example to others or because

[81] TNA ASSI 44/83; TNA ASSI 42/8; TNA ASSI 41/5, York County, July 1768.
[82] 25 Edw. III Stat. 5. c.2-4 (1351), 'Declaration what Offences shall be adjudged Treason', the Treason Act. Burning at the stake continued as the standard sentence for wives convicted of petit treason during the periods surveyed. Elizabeth Boardingham was the last woman in York burnt at the stake for petit treason took place in 1776, History of York, http://www.historyofyork.org.uk/themes/georgian/elizabeth-boardingham, accessed 31 August 2012.
[83] The Gentleman's Magazine, vol. 37, 1767, p. 427, in the matter of Ann Sowerby.
[84] Blackstone, Commentaries, vol. 4, p. 370.
[85] McGowen, Randall (2005) ' 'Making Examples' and the crisis of punishment in mid-eighteenth century England', in David Lemmings (editor) The British and their Laws in the Eighteenth Century, Suffolk, England and Rochester, New York: The Boydell Press, pp. 182-205, p. 185; Morgan, Gwenda and Peter Rushton (1998) Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718-1820, Florence, KY, USA: Routledge, pp. 141-148; Foucault, Michel (1995, second edition, first published in English 1977, French 1975) Discipline and Punish: the birth of the prison, New York: Vintage Books, pp. 59-65.
[86] Hogarth, William (1747) illustration of a public execution at Tyburn in the series 'Industry and Idleness', http://en.wikipedia.org/wiki/File:William_Hogarth_-_Industry_and_Idleness,_Plate_11;_The_Idle_%27Prentice_Executed_at_Tyburn.png, accessed 17 April 2012; McGowen, 'Making Examples', pp. 182-205, p. 205; Rawlings, Philip (1999) Crime and power: a history of criminal justice: 1688-1998, Harlow: Longman, pp. 48-53; Jaffe, Barbara (Summer, 2003) 'William Hogarth and Eighteenth Century English Law Relating to Capital Punishment', Law and Literature, vol. 15, No. 2, pp. 267-278.

they were particularly incorrigible. In an attempt to minimise the excesses of the 'Bloody Code', various judicial procedures and artifices developed by which a person either charged with, or found guilty of, a capital offence could escape execution.

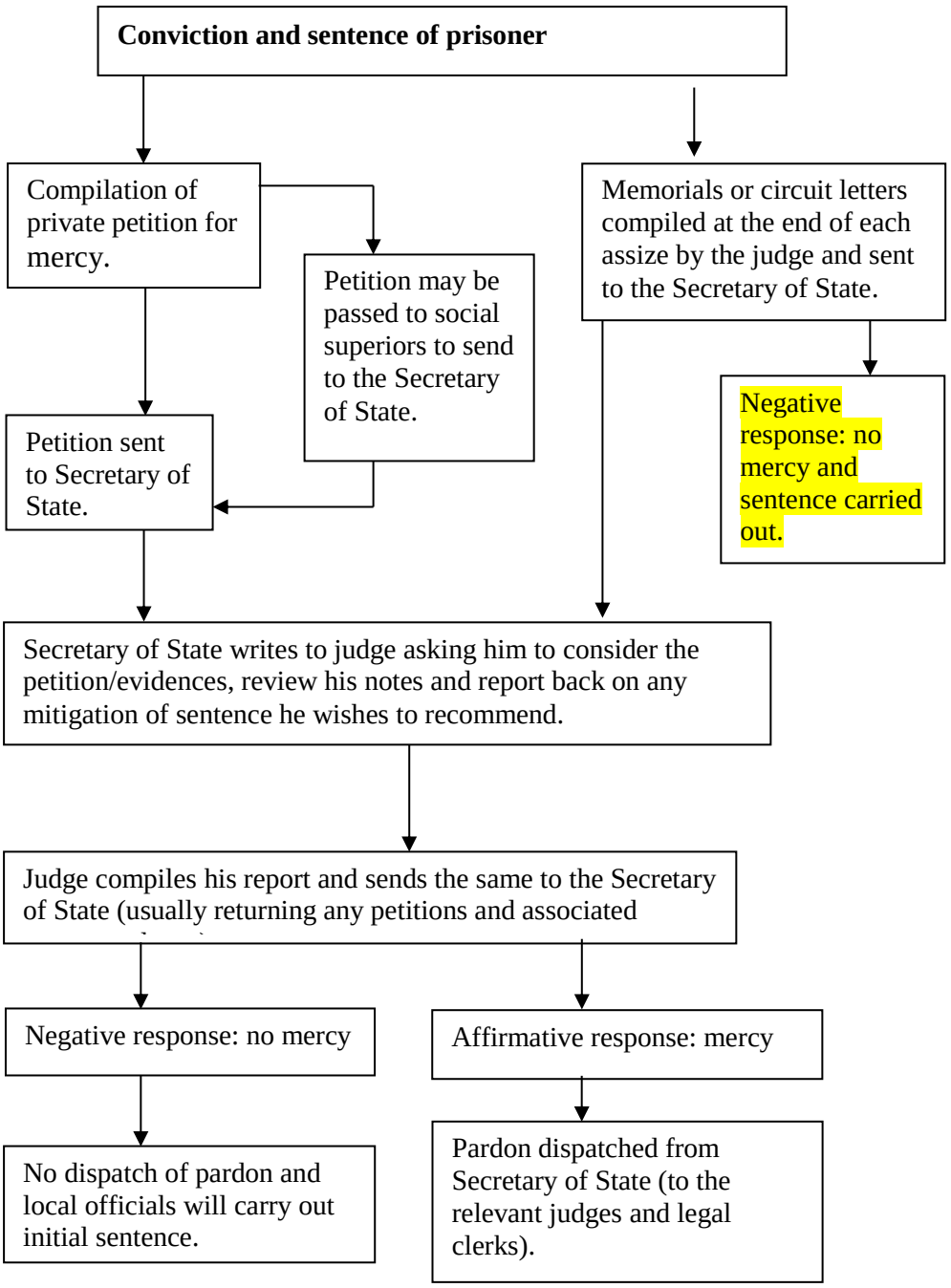
As Blackstone noted, the rise in the number of capital offences meant that both juries and judges sought creative means by which to avoid the exigencies of the criminal law.

> So dreadful a list, instead of diminishing, increases the number of offenders. The injured, through compassion, will often forbear to prosecute: juries, through compassion, will sometimes forget their oaths, and either acquit the guilty or mitigate the nature of the offence: and judges, through compassion, will respite one half of the convicts, and recommend them to the royal mercy.[87]

The process for petitioning for mercy is demonstrated in Diagram 3.1 below. Pardon lists (also referred to as 'memorials', 'certificates' or 'circuit letters') were initially directed by one of the circuit judges to the Secretary of State, in the form of a recommendation to the King in Council to extend mercy.[88] They tended to name all the convicts for which some exercise of mercy was required, with a brief description of the offence committed and the alternative punishment recommended because of 'favourable circumstances' appearing for which the prisoners were recommended as 'fit objects of mercy' upon condition of their being transported to colonies and plantations in America.

[87] Blackstone, Commentaries, vol. 4, pp. 18-19.
[88] The King's Council comprised members of the House of Lords who would decide upon matters referred to them by a Secretary of State. The Council reported on the matters presented to them, and their reasons for the decisions reached would be laid before the King for his approval; Baker, An Introduction to English Legal History, p. 516.

Diagram 3.1: Process of the Prerogative of Mercy.[89]



[89] Adapted from Dr. Paul Carter's introduction to Carter, Paul (editor) (2004) 'Pardons and Punishments, Judges' Reports on Criminals, 1783 to 1830', List and Index Society, Vol. 304, The National Archives Local History Research Group.

Table 3.4: Reprieves from capital sentences in Yorkshire, 1735-1775. [90]

	M	%	F	%
266	**248**	**93.2**	**18**	**6.8**
Capital sentence	**248**		**18**	
Pardon for transportation	170	**68.5**	13	**72.2**
Pardon for enlisting	3	**1.2**	0	**0.0**
Free pardon	10	**4.0**	2	**11.1**
No reprieve stated	65	**26.2**	3	**16.7**
		100.0		100.0

Of the male convicts capitally convicted during the periods surveyed, 26.2 per cent were so sentenced without any recommendation for mercy by way of a lesser order, compared with 16.7 per cent of female capital convicts sentenced without reprieve (Table 3.4). In the later cases, each woman had been convicted of petit treason, for which the assize judge held no discretionary powers to directly recommend them for mercy.[91] Between 1735 and 1745, the only prisoner to receive a free pardon for a capital offence was William Bower following his conviction for highway robbery. After hearing from a number of gentlemen and clergy of York who spoke in his favour, Mr Justice Burnett recommended him for a pardon, which is mirrored in other contemporary observations on the power of petitions from men of influence in a community.[92] However, between 1765 and 1775, eleven free pardons for capital offences were granted to nine men and two women, the majority of which followed a recommendation for mercy from the presiding judge. It is also possible that the social status of a male defendant in particular, or his associates, might have influenced the outcome of a petition for mercy.[93] Following the

[90] Based on the known outcomes of cases collated from extant records relating to the assizes for Yorkshire found in TNA ASSI and SP series, described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-18.
[91] Blackstone, Commentaries, vol. 4, p. 390.
[92] TNA SP 36/59, ; ff. 240 and 246, December 1742, Report of Justice Burnett on the case of William Bower, convicted at York for highway robbery, recommending a pardon. Folio 240,246; f..241, undated, Petition of William Bower declaring his innocence, underwritten with the recommendation from the Gentlemen and Clergy of York. See, Gough, Richard (1979, first written 1701-1706) The History of Myddle, London: Macdonald Futura Publications, pp. 91-92.
[93] See pp. 100-102.

capital conviction of William Birch for stealing sheep, a petition for clemency was made by Dr. Richard Kaye, a royal chaplain and prebendary of York, as a result of which Sir William Blackstone was asked to give his report on the character of the accused and the evidence of guilt at his trial.[94] Blackstone's response was that there were valid reasons for commuting the capital sentence to transportation for seven years and added that if the king were inclined to grant a full pardon he would not object, partly because the crime was not one of the most serious but mostly because he was acquainted with the petitioner, Dr. Kaye.[95]

> But if Lord Suffolk has a wish to extend that mercy still farther, or to oblige our friend Dr. Kaye (whose nice feeling I am not unacquainted with), I do not by any means desire to obstruct the Royal Favor, nor do I think it a case of such very great guilt or notoriety that any prejudice can result to the public from granting William Birch a free pardon.[96]

Following the grant of a pardon, the usual practice was that the prisoner remained in gaol until the pardon was read in court and only after the defendant had 'pleaded' his or her pardon were they released from gaol. However, Birch was favoured by a second petition on his behalf, requesting his release on bail until the following assizes. Blackstone was happy to agree to these "humane wishes" although he added that "this Extra-Proceeding of mine must not, cannot, be drawn into Precedent for the future".[97] Birch did receive a free pardon, not because of his good character, gender or other personal circumstances, but because of the support he obtained from Dr. Kaye, the esteem that Kaye

[94] TNA ASSI 45/31/2/15; TNA ASSI 42/8; TNA ASSI 41/6, York County July 1774; TNA SP 44/91 ff. 349, 360-362; Coldham, Peter Wilson (1992) Emigrants in Chains: A social history of forced emigration to the Americas of felons, destitute children, political and religious non-conformists, vagabonds, beggars and other undesirables, 1607-1776, Surrey: Genealogical Publications Company, pp. 37-38.
[95] Prest, Wilfred (2008) William Blackstone: Law and Letters in the Eighteenth Century, Oxford: Oxford University Press, pp. 273-274.
[96] TNA SP 44/91 ff. 349, 360-362.
[97] Prest, William Blackstone, p. 274.

was held in by Blackstone and the tendency for the king (through his secretary of state) to follow the advice of the trial judge.[98]

In other exceptional circumstances, reprieves from a capital sentence were possible following conviction even for the most serious offences. Following his conviction for highway robbery, Abraham Dealtry was executed by hanging following which his body was taken down and put in a coffin ready for burial. However, when he was later found to be showing some signs of life he was taken back into custody and subsequently received a pardon, subject to transportation for the remainder of his life.[99] For most, the recommendation for mercy from the trial judge was decisive and usually resulted in a conditional pardon being granted by the king, the condition being transportation to one of the American colonies for a number of years.[100]

Mechanisms such as benefit of clergy and the pardoning process allowed both male and female defendants found guilty of a capital offence to be spared the death penalty and sentenced instead to branding, transportation, or imprisonment. Prior to 1706, a representative of the bishop, called the 'Ordinary', was required to attend every gaol delivery in order to approve the claim of benefit of clergy but once the reading of the 'neck verse' was dispensed with, the power passed to the judges to decide who was entitled to claim benefit and who should be refused. [101] Therefore, it is difficult to understand why at the trial of Mary Jackson at the Yorkshire Assizes in March 1742, when she was charged with pickpocketing (a capital offence), Lord Abney declared that "on this tryal of this

[98] TNA E 389/245 f. 462, 16 July 1774, County of York record of gaol delivery.
[99] York Courant, Tuesday 9 April 1744; TNA ASSI 41/3, Crown minutes, York, March 1745.
[100] Radzinowicz, L. (1987, first published 1948) A History of English Criminal Law and its Administration from 1750: The Movement for Reform, vol. 1, London: Stevens & Sons Ltd, p.111 –118; Beattie, Crime and the Courts, pp. 430-449; Baker, An Introduction to English Legal History, p. 516.
[101] 6 Ann., c.9, s. 4 (1706) An Act for punishing felons, etc. Reading not required of Persons praying Benefit of Clergy; Baker, An Introduction to English Legal History, pp. 514-515. After 1718, minute books for the northern circuit tend to refer to the benefit as 'benefit of the statute' rather than 'benefit of clergy'.

woman … the sessions could not give benefit of clergy [as] the Ordinary is not obliged to attend them".[102] Nevertheless, neither the absence of clerical representation nor the presence of an unsympathetic judge tied the hands of the 'pious' jury who avoided the inevitable punishment for committing a grand larceny, by finding her guilty only of the theft of a purse valued at 1d.

The only point during the course of the judicial process when women played a part in the administrative process, other than when a woman took the role of prosecutor, was in the event of a woman 'pleading her belly' following a capital conviction, in which case the fact of her pregnancy was determined by a jury of twelve matrons.[103] Laura Gowing asserted that the official role of midwives in investigating pregnancy gave women a stake in the legal process based on their professional qualification and personal experience.[104] That stake was, however, very small and relevant to only a handful of capitally convicted, pregnant women and it is not to be presumed that juries of matrons would automatically conspire to save another woman from her fate. When Ann Sowerby was sentenced to death for the murder of her husband, her plea that she was pregnant was presented to a jury of matrons who dismissed her claim and the sentence was carried out.[105] In any event, a bogus plea of pregnancy would only result in a respite until such time as the error became obvious, while a woman who successfully pleaded her belly would merely have her sentence respited until after the birth of her child.[106] Following the birth of the child a judge might order that the original sentence be carried out, or recommend that she be reprieved for transportation, or a full pardon. When Naomi Hollings was sentenced to

[102] TNA ASSI 41/3, Crown minutes, York city, March 1743
[103] Forbes, Thomas R. (1988) 'A Jury of Matrons', Medical History, pp. 23-33.
[104] Gowing, Laura (2001) 'Ordering the body: illegitimacy and female authority in seventeenth-century England', in Braddick, Michael J. and J Walter (editors), Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland, Cambridge: Cambridge University Press, pp. 43-62, p. 49.
[105] TNA ASSI 42/8 York county Aug 1767; TNA ASSI 41/5; TNA E 389/244 f. 170; The Gentleman's Magazine, vol. 37, 1767, p. 427.
[106] See, Oldham, James (1985) 'On Pleading the Belly: A History of the Jury of Matrons', Criminal Justice History, vol. 6, pp. 1-64.

death in 1739 for the crime of domestic burglary, her claim that she was pregnant was upheld by a jury of matrons.[107] Six months later, following the birth of the child, the original order to hang her was confirmed: "Being now brought to the bar and asked what she had to say for herself why this judgement should not be executed upon her has nothing to say therefore let her be hanged by the neck until she be dead according to her former judgement."[108] Nevertheless, at the following assizes she was granted a conditional pardon and her sentence was subsequently reduced to transportation for fourteen years.[109]

In the absence of a petition for mercy, the time from the passing of a capital sentence to the execution of the prisoner might be fairly swift. On 24 February 1748, local mill owner Josiah Fearn stabbed Thomas Greaves who died of his wounds. Fearn was committed to York Castle on 26 February and was tried and capitally convicted at the following assizes on 10 March. Fearn was hanged on 25 March.[110] Only twenty-eight days had elapsed between the offence being committed and his execution. Fearn's social standing did not save him and he received neither the sympathy of the circuit judge nor the support from members of the community who might have petitioned for mercy on his behalf. The only benefit his social status brought him was the right to be buried at his local church, rather than the grounds of the gaol.

[107] TNA ASSI 44/53, TNA ASSI 41/3, Crown minutes, York City, March 1739.
[108] TNA ASSI 41/3, Crown minutes, York City, April 1740.
[109] TNA SP 44/83 ff. 328-329, April 1740.
[110] Oates, Jonathan (editor) (2006) The Memoranda Book of John Lucas 1712-1750, Publications of the Thorseby Society, second series, vol. 16, Leeds: Thorseby Society, p. 898, undated entry during June 1748.

Single and married women (assizes)

Table 3.5: Yorkshire Assizes – grand jury: married and single female defendants, 1735-1775. [111]

	Married	**%**	**Single**	**%**
All bills against female defendants				
284	**70**	**24.6**	**214**	**75.4**
Bill not found	3	**4.3**	6	**2.8**

Table 3.6: Yorkshire Assizes – petty jury: married and single female defendants, 1735-1775. [112]

	Married	**%**	**Single**	**%**
275	**67**	**24.4**	**208**	**75.6**
	67		**208**	
Transferred to K.B.	0	**0.0**	1	**0.5**
Discharged for want of prosecution	6	**9.0**	21	**10.1**
Guilty	17	**25.4**	48	**23.1**
Partial verdict	12	**17.9**	34	**16.3**
Not guilty	31	**46.3**	92	**44.2**
Removed	0	**0.0**	3	**1.4**
Keep the Peace	0	**0.0**	0	**0.0**
Remain in gaol	1	**1.5**	9	**4.3**
		100.0		100.0

Married women were less prominent in the assizes than at the quarter sessions of Yorkshire and account for one-quarter of female defendants found in the assize records, while single women make up the remaining three quarters (Table 3.6). Grand juries for the assizes in Yorkshire appear to have been less lenient than their counterparts at quarter sessions when only 4.3 per cent of bills presented against married women and 2.8 per cent against single women were rejected as untrue (Table 3.5). When placed before an assize

[111] Based on the known outcomes of cases collated from extant records relating to the assizes for Yorkshire found in TNA ASSI and SP series, described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-18.

[112] Based on the known outcomes of cases collated from extant records relating to the assizes for Yorkshire found in TNA ASSI and SP series, described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-18.

petty jury, 25.4 per cent of all married female defendants were found guilty of the full offence alleged, compared with slightly fewer unmarried female defendants at 23.1 per cent of female convicts (Table 3.6). This stands in contrast to the average female conviction rate of 53.5 per cent at quarter sessions, and provides evidence of greater leniency towards all female offenders in the higher court where harsher sentencing rules applied.[113]

The application of partial verdicts was also fairly equal between married and single women 17.9 per cent of married women and 16.3 per cent of single women benefited from a partial verdict at the assizes for Yorkshire. With one exception, only single women were held in gaol between the biannual sittings at the assizes, either because their trial had been put over to a later date or, having been acquitted of one offence, they were detained on remand to answer other charges against them. Overall, the married/single ratio demonstrated in Table 3.5 points to the more lenient treatment of married women observed by Walker[114] but once a married woman was indicted the evidence is of the more equal treatment of women, whatever their marital status (Table 3.6).

Transportation

Following the passing of the Transportation Act in 1718, circuit judges for Yorkshire were quick to take up the opportunity to transport its felons overseas. In August 1718 at York Assizes four men were reprieved from a capital conviction on recommendation for transportation, while a further three men were sentenced directly for transportation to America. Reprieves for transportation were not given to all convicts and four other men capitally convicted at the same sessions were not beneficiaries of the court's clemency. It appears that no arrangements had been made for actually carrying out the orders for

[113] See p. 100.
[114] Walker, Garthine (2003) Crime, Gender and Social Order in Early Modern England, Cambridge: Cambridge University Press, p. 206.

transportation, so that three men sentenced to be transported had to be remanded in gaol until the following session. In March 1719, Elizabeth Coates became the first woman to be ordered directly for transportation in Yorkshire under the terms of the statute, alongside a further three men. By which time the clerk of the assize had entered into a contract for the transportation of seven convicts, including Coates.[115]

Elizabeth Hardy and Elizabeth Lawson were married women and co-defendants convicted of theft at York Assizes in 1768. Following successful claims to their entitlement to the benefit of clergy they were sentenced to transportation for seven years. Richard Dorsdell, a master mariner of Kingston upon Hull, entered into separate bonds of £300 each with the clerk of the peace, in which he undertook to take both women from the gaol, put them on a ship bound for America within the following two months, obtain a certificate from the governor or customs officer that they had landed in America, and deliver the certificate to the clerk in Hull.[116] If either woman escaped before being handed over in America, or returned before time, Dorsdell was liable to pay £40. Other contracts on similar terms exist for the county and none of those examined include any requirement for a report on the nature of the placement, work or conditions expected of the convict during the term of banishment from the country. Although the onus was on the contractor to ensure that a convict served the full term of his or her order, it would appear that the contractors were more concerned with the delivery of the convicts, rather than any long-term commitment to find them work or monitor their progress, as evidenced by the report of one courier at an enquiry before the House of Commons:

[115] TNA ASSI 41/2, 10 March 1719, contract of Edward Beckwith for the transportation of convicts.
[116] TNA ASSI 44/87, 11 October 1768, record payment of £7 to Richard Dorsdell, master mariner of Kingston upon Hull as agreed with John Melling and John Booth, two aldermen of the city, to transport Elizabeth Hardy for seven years.

> I never sold for more than 7 years. The Laws of the Colonies not permitting us to sell for more years though the man might be condemned for fourteen years or more. Others after being recorded as delivered there having bought their Liberties of me were freed to find themselves a master but not to return.[117]

Unfortunately, Christopher Tomlins's recent book on the colonization of America makes only a passing reference to the role of convict labour and fails to explore the role of male and female convicts who remained in America once the seven year term of servitude had elapsed.[118]

Orders for transportation issued in Yorkshire included a requirement that they were carried out within a couple of months of the sentence being passed. At the time William Birch received a free pardon (having benefited from an earlier reprieve from a capital conviction to transportation for seven years) he was already aboard a ship bound for America, which fortunately for him had not yet set sail.[119] For convicts awaiting consideration of a petition for mercy, one year might have elapsed between a recommendation for mercy and the order for transportation being carried out, during which time prisoners were held in gaol until arrangements for transportation were concluded.[120] Elizabeth Cahill would have been remanded in gaol from the time of her capture in September 1732 until her reprieve from a capital conviction for shoplifting was granted in July 1735. Abraham Dickinson languished in gaol from the time of his capital conviction in July 1723 until March 1737 when he was returned to court to 'plead his

[117] TNA T1/500/201-210, accounts of Duncan Campbell; TNA HO 7/1,Minutes of the House of Commons Respecting a Plan for Transporting Felons To the Island of Leemaine in the River Gambia, ff. 78-82. Evidence given 12 May 1785 by Duncan Campbell esq.
[118] Tomlins, Christopher (2010) Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865, Cambridge: Cambridge University Press.
[119] TNA ASSI 42/8; TNA ASSI 41/6, York County July 1774; TNA SP 44/91 ff. 349, 360-362; Coldham, Emigrants in Chains, pp. 37-38.
[120] Howard, John (1777) The State of the Prisons in England and Wales, Warrington: William Eyres. John Howard's report revealed that many prisoners were expected to pay for any bedding, food and other additional comforts, including the removal of restrictive irons.

pardon', in order to declare his agreement to be transported.[121] Any period of incarceration pending transportation was irrelevant, only on arrival in America would the term of exile commence.

The severe conditions under which prisoners were held pending transportation are demonstrated by the details found in an invoice presented by the gaoler in Beverley, requesting the costs for replacing restraints damaged by some of the prisoners. "[For the] repair of windows in gaol; purchase of irons ('handcuffs, locks, Bolts, Shackles, Rings and links'), the prisoners ordered for transportation having broken them".[122] For men and women who were transported, it is generally agreed that mortality rates improved on the sea crossings during the eighteenth century, with between 10 and 20 per cent of convicts dying during the voyage in the period 1719-1736, falling to a mortality rate below 5 per cent by 1770 with improved sanitary conditions.[123] Mortality rates might, however, increase if records of those who died in prison awaiting transportation and those who died on arrival in America pending their sale were available for consideration.

Conclusion (assizes)

The greatest proportion of the work of the criminal assizes was the determination of the more serious acts of theft and violence committed in the county (Table 3.1), where the number of men indicted for all crimes was significantly higher than of women, with the obvious exception of infanticide. Records of failed bills before grand juries at the assizes are incomplete and proceedings not recorded. However, women brought before a petty jury in the public arena of the assizes were the greater beneficiaries of absolute acquittals and

[121] TNA ASSI 41/2 f. 119, July 1734; TNA ASSI 41/3, Crown minutes, York City, March 1725 - March 1737. During the course of the interceding sessions prisoners were returned to court where repeated orders '*prius reprirat et reprirant ultius*', meaning that they remained in gaol on the former order.
[122] ERY QSP/157, c.1723-1734, petition of Richard Woodhouse, 'gentleman gaoler of York'.
[123] Shaw, A.G.L. (1966) Convicts & the Colonies, London: Faber and Faber, p. 35; Ekirch, A.R. (1992, first published 1987) Bound For America: The Transportation of British Convicts to the Colonies, 1718-1775, Oxford: Clarendon Press, pp. 104-105.

partial verdicts (Table 3.2). However, as demonstrated in Table 3.3, a woman convicted for a non-capital offence could not expect to rely on her gender to protect her from being separated from her family when a higher percentage of female convicts than their male counterparts were sentenced to transportation for seven or fourteen years, although the passing of a partial verdict may have saved some from hanging.

Despite increases in the number of capital offences and capital convictions, the number of people hanged during the eighteenth century was, reportedly, less than that for the end of the sixteenth century.[124] The conviction and sentencing of capital offenders in Yorkshire reflected a gradual but growing reluctance to use the death penalty for all but the most serious offences. It is not unexpected to find in the assize records for Yorkshire that men were more likely than women to be capitally sentenced, and that following such convictions, women were more likely than men to have that sentence commuted for some other order (Table 3.4). However, women reprieved from a capital sentence were more likely than men to be transported (Table 3.4) and more likely to be whipped, branded or placed in the pillory (Table 3.3). When it came to the ultimate penalty, only three women were capitally convicted in circumstances where no reprieve was possible (save from the king directly), while over one-quarter of men capitally convicted were denied any reprieve during the periods surveyed (Table 3.5).

King argued that various factors such as good character, unemployment and economic need may have influenced the final decisions of judges in the exercise of their discretionary powers in the sentencing and recommendations for mercy.[125] He also suggested that a woman's vulnerability may have resulted in them receiving a more sympathetic hearing in the courts where they were perceived to pose "a less serious threat to lives, property and

[124] Rawlings, Crime and power, p. 39.
[125] King, Crime, Justice and Discretion, p. 105.

order".[126] However, there is little written evidence from rejected bills or other documents to support those suppositions for Yorkshire and, while the outcomes identified are not necessarily incorrect, the main hypothesis of this thesis is that those outcomes may have been achieved by different means, through the interpretation and application of the rules of evidence and procedure and wider access to legal representation for capital offenders. For example, the different treatment of married and single women illustrated in Table 3.5 indicates greater concern about the removal of a married woman from her family, which can be explained for more pragmatic reasons than sympathy.

The provisions of statutory and common law criminal offences, the evolving rules of evidence and procedure and the outcomes of the judicial processes reflected in verdicts, sentencing and appeals, provide a 'testable' base from which conclusions may be drawn as to reasons why certain decisions were made and mercy extended or withheld. Therefore, the following chapters examine the exercise of discretion within the context of the criminal trial and in respect of specific offences.

[126] King, Crime and Law in England, 1750-1840, p. 192; Beattie, Crime and the Courts, p. 439.

Chapter 4. Homicide

Now come all you young fellers, where'er you may be
Come listen a while and I'll tell you
For its many the young man meself I have seen
More fitted to serve than to die on the string
But those hard-hearted judges, how cruel they have been
For they've sent us poor lads to Virginia.[127]

While men might display physical courage to defend their honour and that of their family, women were expected to take a more passive role in society. Studies of violent crime point towards the long-term decline of homicide in Europe, with a visible downward trend between the middle-ages and the eighteenth century, towards a level more commonly experienced today, although it is possible that the number of men and women accused of homicide during the eighteenth century was higher in some other parts of the country than it was in Yorkshire.[128] The statistical evidence is that men were predominantly accused of the murder of other adults (particularly other men) and women were more often the victims than the perpetrators of homicide. Nevertheless, some women were violent and the majority of women accused of homicide were unmarried women accused of the murder of their new-born children (infanticide). This chapter examines legal processes leading to the acquittal or conviction of a man or woman accused of the homicide of an adult or baby in eighteenth-century Yorkshire and subsequent sentencing policies.

Defining homicides

The term 'homicide' generally encompasses both murder and manslaughter. By the eighteenth century murder was (and still is) defined as the wilful killing of any living person within the realm, with malice aforethought, such that the person dies within a year

[127] 'Virginia', traditional.
[128] Spierenburg, Pieter (2008) A History of Murder: Personal Violence in Europe from the Middle Ages to the Present, Cambridge: Polity Press, p. 4.

and a day of their wounds.[129] As a common law offence without statutory definition, the courts have for hundreds of years been concerned with the interpretation of each element of the offence. For example, the causing of an abortion was at one time classed as a murder, although, by the eighteenth century it was classified as a misdemeanour, the unborn child not being deemed a 'living person'.[130] Likewise, killing in response to varying levels of provocation has been the subject of much case law on the meaning of 'malice aforethought' (intent). Only one case in the records surveyed directly addressed the issue of insanity and its effect in negating an accused's ability to form the necessary 'intent' or *mens rea* for murder. When a coroner's jury identified Robert Barker, a gentleman of Beverley, as having caused the death of Mary Issott by beating, they further determined that at the time of the incident Barker was "of insane mind and memory".[131] Barker was acquitted of murder at the following assizes on the grounds that he was incapable of forming the intent for either murder or manslaughter. The case serves to illustrate Dana Rabin's analysis of the changing relationship between crime and mental states during the eighteenth century.[132] However, without other evidence, it is impossible to say whether Barker's plea was genuine, or whether it was his social status that enabled him to obtain legal advice and representation in putting forward a successful plea of temporary insanity, thus avoiding a capital conviction.

Manslaughter is a homicide that lacks intent and occurs when death results from the commission of another unlawful act, therefore, it fell within the category of offences that

[129] Hawkins, William (1739, third edition, first published 1715) A treatise of the pleas of the Crown: or, a system of the principal matters relating to that subject, digested under their proper heads, vol. 1, London, pp. 78-79.
[130] Hawkins, A treatise of the Pleas of the Crown, vol. 1, p. 80.
[131] TNA ASSI 44/54, coroner's report on the death of Mary Issott, 22 April 1739.
[132] Rabin, D.Y. (2004) Identity, Crime and Legal Responsibility in Eighteenth-century England, Basingstoke: Palgrave Macmillan. Rabin's sources include depositions from the Northern Circuit between 1600 and 1800.

were eligible for benefit of clergy.[133] The Transportation Act of 1718 allowed a man or woman convicted of manslaughter an absolute discharge, subject to branding,[134] although by the latter part of the eighteenth century a custodial sentence was often attached to an order for branding by assize judges sitting in Yorkshire.[135] In practice, few indictments found for Yorkshire specified a homicide in terms of manslaughter as grand juries tended to favour finding a 'true bill' in terms of murder (without consideration of the legal distinctions between the two offences), leaving it to a petty jury to determine whether a partial verdict for the lesser offence was appropriate on the facts of the case.[136]

Some forms of homicide fell within the category of 'petit treasons', reflecting the hierarchical, gendered nature of society that continued beyond the eighteenth century. Petit treason took three forms: when a wife killed her husband, a servant killed his or her master or when a person killed his priest.[137] The classification of the murder of a man by his wife as petit treason reflected the husband's rule over his wife as a microcosm of the king's rule over his subjects. The gendered attitude of the law is demonstrated in the sentencing of men and women who murdered their spouse. While a man who killed his wife might either be hanged, reprieved for transportation or have the charges against him reduced from murder to manslaughter, between 1351 and 1790, the penalty for a woman who killed her

[133] See glossary. Hawkins, A treatise of the Pleas of the Crown, vol. 1, p. 76; Baker, J.H. (2007, fourth edition, first published 1971) An Introduction to English Legal History, Oxford: Oxford University Press, p. 515.
[134] 4 Geo. I, c.11 (1718) An Act for the further Preventing Robbery, Burglary and other Felonies and for the more effectual Transportation of Felons.
[135] Hawkins, A treatise of the Pleas of the Crown, vol. 1, p. 77. The benefit was removed where the circumstances of death involved the killing of an unarmed person, or the person killed did not make the first strike against the other and that person died within six months of the attack; Baker, An Introduction to English Legal History, p. 515.
[136] Beattie, J.M. (2002, first published 1986) Crime and the Courts in England 1660-1800, Oxford: Oxford University Press, p. 108-124; King, Peter (September 2010) 'The impact of urbanization on murder rates and on the geography of homicide in England and Wales, 1780-1850', The Historical Journal, vol. 53 (3), pp. 671 – 698, p. 679.
[137] 25 Edw. III Stat. 5. c.2 (1351), 'Declaration what Offences shall be adjudged Treason', the Treason Act. See Coke, Sir Edward (Steve Sheppard, editor) (2003) The Selected Writings and Speeches of Sir Edward Coke, vol. 2, Indianapolis: Liberty Fund, chapter 2, 'Of Petit Treason', http://oll.libertyfund.org/title/912/224749, accessed 27 March 2011.

spouse was that she burn at the stake.[138] Although an assize judge was able to exercise a limited amount of discretion when sentencing cases of homicide, those offences which fell within the category of a petit treason were beyond his powers of reprieve as they were offences against the state and required intervention from the king if any pardon was to be considered.[139] The same restrictions did not apply in cases of murder where an assize judge could reprieve a capital convict with a recommendation to the Secretary of State that they were 'fit objects of mercy'.[140]

Infanticide, 'the destroying and murdering of bastard children' was, by definition, a crime that could only be committed by an unmarried woman and, as such, raised questions on the morality of the accused and her maternal instincts.[141] While infanticide and murder were both capital offences, the social differences conferred by marital status were sufficiently important to the legislature so that they differentiated between an unmarried mother and the married woman. A married woman could be charged with common law murder when a new-born child died in questionable circumstances, although, there are no reported indictments of a married woman for that offence in Yorkshire during the periods surveyed. In contrast, infanticide went to the heart of society's suspicions towards the single woman living an independent life and imposed a presumption of guilt on an unmarried mother who concealed the body of a still-born child by assuming that she was in some way responsible for its death, unless she could prove otherwise. While there were legal distinctions between child-murder and infanticide, the term 'infanticide' is used here to mean the homicide of any child under the age of two years. The evidence from the

[138] 25 Edw. III Stat. 5. c.2 (1351), the Treason Act; 30 Geo. III, c.48 (1790) Act for discontinuing the Judgement which has been required by Law to be given against Women convicted of certain Crimes, and substituting another Judgement in lieu thereof, substituted the punishment of hanging; 9 Geo. IV, c.31 (1828) Offences Against the Person Act, under which petit treason ceased to be a distinct offence from murder.
[139] Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Public Wrongs, vol. 4, Oxford: Clarendon Press, p. 390.
[140] Blackstone, Commentaries, vol. 4, pp. 394.
[141] 21 Jac. I, c.27 (1624): An Act to prevent the destroying and murdering of bastard children.

Yorkshire records is that women accused of the murder of an innocent child fared better than those accused of the murder of another adult.

Fatal and non-fatal assaults

Table 4.1: Homicide and other acts of violence in Yorkshire, 1735-1775. [142]

Q.S.	**M**	**%**	**F**	**%**
1637	**1385**	**84.6**	**252**	**15.4**
	1385		**252**	
Homicide	2	**0.1**	1	**0.4**
Assault	1373	**99.1**	251	**99.6**
Rape and sodomy	10	**0.7**	0	**0.0**
		100.0		100.0
Assizes	**M**	**%**	**F**	**%**
317	**251**	**79.2**	**66**	**20.8**
	251		**66**	
Homicide	113	**45.0**	57	**86.4**
Assault	104	**41.4**	9	**13.6**
Rape and sodomy	34	**13.5**	0	**0.0**
		100.0		100.0

The allocation of violent crimes between the courts resulted in the greater proportion of non-fatal assaults and attempted rapes and sodomy being determined by justices of the peace at petty or quarter sessions, while the more serious assaults, rape, sodomy and homicide were determined at the assizes (see Table 4.1). As a proportion of all acts of violence committed by men and women, homicide accounted for a far higher percentage of female offending at the assizes than non-fatal assaults. For reasons examined in the following chapter, women were more commonly accused of minor petty assaults presented to the lower court. Although homicide made up a greater percentage of female violence than for men, their activities were most often related to homicides associated with the

[142] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.

family, particularly infanticide. In contrast, men were more likely than women to be accused of the more serious non-fatal assaults and all sexual assaults determined at the assizes. The outcomes of homicide trials considered in this chapter demonstrate varying interpretations of gendered violence at different stages of the judicial process.

Gender of those who committed homicide

Table 4.2: Homicide in Yorkshire Assizes by gender of accused, 1735-1775. [143]

	All homicides	**%**		**Homicides, excluding infanticide**	**%**
Total	**170**			**120**	
M	113	**66.5**		109	**90.8**
F	57	**33.5**		11	**9.2**

The role of the coroner's court was limited to establishing the cause of a sudden or unexplained death, followed by the referral to the assizes of any person identified as having caused or contributed to that death so that they could stand trial for murder or manslaughter.[144] As illustrated in Table 4.2, male defendants accounted for 66.5 per cent of all homicides in the assize records for Yorkshire. However, the ratio of men to women changes significantly when infanticide is removed from the calculation, when the percentage of male defendants represents 90.8 per cent of all adult homicides during the periods surveyed.

A comparison of the annual rate of all homicides alleged to have been committed by men and women identified in Beattie's study of Surrey[145] and the data for Yorkshire set out in Table 4.2, points to an average of 1.5 men per annum accused of homicide at the Surrey

[143] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[144] See p. 41.
[145] Beattie, Crime and the Courts, p. 83, Table 3.1, Beattie's data set consisted of 304 men and 30 women accused of all homicides over a 120 year period.

assizes (1660-1800) and an average of 5.1 men per annum in Yorkshire. In comparison female defendants in homicide accounted for an average of 1.0 woman per annum in Surrey and 2.5 women per annum in Yorkshire.[146] Beattie's survey included an analysis of data for male offenders (only) over shorter time periods, resulting in slightly higher average of 2.6 homicides by men per annum (1720-1739) and 2.45 per annum (1760-1779).[147] Both Beattie's survey and this one included bills found, bills not found and references to all homicides, including infanticide. Therefore, variations in the average number of homicides committed per annum either demonstrates a higher incidence of homicides committed in Yorkshire, or that a greater number of cases proceeded from the coroner's court to trial in Yorkshire. King's study of murder and manslaughter in late eighteenth-century indicated an annual rate of 2.4 homicides in Surrey (1740-1800)[148] and 3.39 per annum in Yorkshire (1781 and 1799).[149] Although King's data does not include a breakdown of offending by gender and excludes bills not found and infanticide from his survey, the evidence of the three studies together points to a higher incidence of homicide in Yorkshire than in Surrey.

Prosecuting homicide

Mark Jackson and Rushton and Morgan, identified a statute of 1752 as providing evidence of improved terms for the payment of coroners which may have acted to encourage the greater participation of coroners in pre-trial investigations of suspicious deaths. [150] However, King noted the negative influence of magistrates who were able to withhold payments from coroners for 'unnecessary' inquests which, he suggests,

[146] Beattie, Crime and the Courts, p. 83, Table 3.1.
[147] Beattie, Crime and the Courts p. 90, Table 3.2.
[148] King, 'The impact of urbanization', p. 680, Table 1.
[149] King, 'The impact of urbanization', p. 681, Table 2.
[150] 25 Geo. II c.29 (1752) An Act for giving a proper Reward to Coroners; Jackson, Mark (1996) New-Born Child Murder: Women, illegitimacy and the courts in eighteenth-century England, Manchester and New York: Manchester University Press, p. 88; Morgan, Gwenda and Peter Rushton (1998) Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718-1820, Florence, KY, USA: Routledge, p. 53.

contributed to the under-reporting of homicides until at least 1860.[151] Therefore, a detailed examination of the records of the corner's court in Yorkshire may provide greater insight into the relationship between the coroner's court and the assizes.[152]

Once a coroner's inquest confirmed a suspicious death and identified culpability, the next stage was to nominate a person to take responsibility for the prosecution of the named culprit.[153] Male relatives or witnesses were more commonly selected to prosecute a homicide than a woman in Yorkshire, reflecting gendered attitudes towards male and female roles in the judicial process. Nonetheless, in certain situations public officials took an active role in prosecuting an accused murderer. When William Dighton, an excise officer, was murdered by men involved in a major coining operation in 1771 Robert Parker, a local attorney, acted as the Crown's prosecuting solicitor at the Assizes in York, with responsibility for collecting evidence and drawing up briefs for the prosecution of the coiners and the murderers of Dighton.[154] The social status of the victim of murder was not necessarily the primary factor in persuading local officials to prosecute a murder. In 1741, debtor William Petyt was badly beaten by his gaoler, Thomas Griffiths, and thrown into a disused dungeon, where he died eleven days later from the injuries sustained and general neglect. Griffiths covered up the death but complaints from other prisoners, including Petyt's mother, were made to justices of the peace, Richard Witton of Lupset and Richard Dawson of York. Witton and Dawson pursued the case at their own expense and reported

[151] King, 'The impact of urbanization', p. 677. King suggests that the influence of magistrates continued to be a problem until 1860, after which time payments were made directly to coroners.
[152] Reports of coroner's inquests are scattered across the records of assizes, King's Bench and local repositories.
[153] The Prosecution of Offences Act 1879 was significant in that it marked the introduction of the Director of Public Prosecutions, before then there was no public prosecutor to take criminal cases to court. The Prosecution of Offences Act 1985 implemented recommendations that there be a single unified Crown Prosecution Service with responsibility for all public prosecutions in England and Wales.
[154] Webster, C.D. (1 April 1966) 'Robert Parker, Attorney' Transactions of the Halifax Antiquarian Society, pp. 53-82, pp. 65-66. TNA ASSI 42/8, March 1771 and August 1772; TNA ASSI 41/6, March 1771. During the course of the trial an effort was made to discredit Parker when David Greenwood (a relative of at least two of the accused men) claimed, unsuccessfully, that Parker had taken a bribe of £20 to get an acquittal for David Hartley.

the matter to the Secretary of State. Despite their efforts, Griffiths was acquitted of murder after other prisoners and prison assistants testified on his behalf.[155] Although it was not necessarily typical of prosecutions in Yorkshire, when women played an active role in the investigation of complaints in infanticide, they were occasionally bound to prosecute the claim as, for example, when Elizabeth Frazier and Barbara Thompson were ordered to prosecute Ann Parcivall for infanticide; although, as explained earlier, recognizances for their appearances were provided by one's father and the other's husband.[156]

Victims of homicide

Studies of homicide from the seventeenth-century onwards have commonly observed that it is more often the case that victims and killers are known to each other and that homicides committed by women most frequently occur within a domestic setting.[157] At the same time, male and female homicides have been viewed as intrinsically different, resulting in gendered differences in the treatment of men and women who kill. Table 4.3 below includes a breakdown of homicides by the type of victim and demonstrates that the ratio of about 2:1 (men to women) accused of homicide. It also provides evidence of gendered offending where 80.7 per cent of female defendants in homicide were accused of infanticide; whereas a greater percentage of male defendants in homicide (62.8 per cent) were charged with the murder or manslaughter of another adult male. While over 90.0 per cent of homicides in the Yorkshire records alleged to have been committed by a man

[155] TNA SP36/57 ff. 62-63, 26 October 1741, petition regarding Griffiths' innocence; TNA SP36/57 f. 7, report of William Fountain, a prisoner for debt in York castle October 1741; f. 58, report of an inquiry by four justices of the peace into the matter. See also, Woodfine, P. 'The Power and Influence of Gaolers: Life and Death in York Debtors' Prison', www.hud.ac.uk/news/05_01/history/phil.htm, accessed December 29 2006, noted that some kind of 'justice' was finally obtained when Griffiths, who had invested heavily in speculative building, became a debtor himself and died in his own gaol in 1751.
[156] TNA ASSI 45/20/1/97, 99A (1735), recognizance for two female witnesses to prosecute Ann Parcivall for infanticide; See p. 68.
[157] D'Cruze, Shani (2010) 'Murder and Fatality: The Changing Face of Homicide', Kilday, Anne-Marie, David S. Nash (2010) Histories of Crime: Britain 1600-2000, Basingstoke: Palgrave Macmillan, pp. 100-119, pp. 101, 107.

concerned other adult victims, very few women (nine over twenty-two years) were accused of the murder of another adult.

Table 4.3: Homicide and victims in Yorkshire, 1735-1775. [158]

	M	%	F	%
170	**113**	**66.5**	**57**	**33.5**
Total	**113**		**57**	
Murder of a man (not spouse)	71	**62.8**	6	**10.5**
Murder of a woman (not spouse)	20	**17.7**	2	**3.5**
Murder of a spouse	10	**8.8**	3	**5.3**
Murder of an infant	4	**3.5**	46	**80.7**
Manslaughter man	2	**1.8**	0	**0.0**
Manslaughter woman	2	**1.8**	0	**0.0**
Victim unknown	4	**3.5**	0	**0.0**
		100.0		100.0

While a greater percentage of men than women accused of homicide in Yorkshire killed their spouses, it was petit treason that was more greatly condemned. The records surveyed cover two periods of eleven years each and indicate that the number of men who murdered their spouses represents about one case every two years, compared to one recorded case of petit treason every eleven years (although both cases of petit treason recorded occurred during the later period surveyed). While 17.7 per cent of the victims of men accused of killing an adult was a woman (other than his wife) only 10.5 per cent of the victims of women accused of the homicide were a member of the opposite sex (who was not her husband) (Table 4.3), although the actual number of homicides is very small and the number convicted even lower (see Table 4.4). Conviction and sentencing practices

[158] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.

in homicides where the victim was a member of the opposite sex is considered further in this chapter as evidence of contemporary attitudes towards men who killed 'the weaker sex' and women who broke the feminine ideal.

62.8 per cent of all homicides by men in Yorkshire concerned another adult male victim or 3.2 cases per annum, when the balance of power may have been expected to be fairly equal. In contrast, the homicide of one woman by another was extremely unusual and accounted for only one case during each of the eleven year periods surveyed. Instead, Table 4.3 demonstrates a link between women who killed and the home, when over 90.0 per cent of women concerned in a homicide were accused of killing a spouse or infant. In contrast, homicides by men of a family member represent about 12.0 per cent of all homicides committed by men. Beattie also identified the family as the most common setting for homicides, whether related by blood or marriage and found that women in Surrey were charged with 60.0 per cent of deaths in the family but accounted for only 5.4 per cent of all other homicides.[159] Although numerically low, the data recorded in this and Beattie's survey confirms other evidence of the spheres in which male and female offending took place, where the majority of the victims of women who killed were close family members, while men were more likely to be charged with the murder of other men as a result of incidents in the street or workplace.[160]

Conviction rates

Beattie observed that fewer women than men were involved in homicides reported to the Surrey assizes over the period 1600-1800, that women were more likely than men to be discharged by a grand jury or acquitted by a trial jury and that few women were convicted

[159] Beattie, Crime and the Courts, pp. 105-106, Table 3.3.
[160] Beattie, Crime and the Courts, p. 106; Walker, Garthine (2003) Crime, Gender and Social Order in Early Modern England, Cambridge: Cambridge University Press, pp. 134-135.

of manslaughter.[161] The outcomes for Yorkshire during the eighteenth century recorded in Tables 4.2 and 4.3 demonstrate that far fewer women than men were accused of an adult homicide, however, no rejected bills for general homicide appear in the assize records for Yorkshire to allow comparison with the Surrey records, though it is possible that found indictments at the coroner's court proceeded directly to the petty jury stage at the assizes in Yorkshire.

Table 4.4: Homicide (excluding infanticide) conviction rates, Yorkshire, 1735-1775. [162]

	M	**%**	**F**	**%**
103	**93**	**90.3**	**10**	**9.7**
Total	**93**		**10**	
Bill not found	0	**0.0**	0	**0.0**
Discharged for want of prosecution	2	**2.2**	0	**0.0**
Not guilty	54	**58.1**	4	**40.0**
Guilty	17	**18.3**	3	**30.0**
Partial verdict	17	**18.3**	3	**30.0**
Other disposal [163]	3	**3.2**	0	**0.0**
		100.0		100.0

The number of women accused of an adult homicide is too small for any relevant comparison with men convicted of similar offences, when the outcome was that only one woman was convicted of the full offence during the first sample period and two women during the later one. All homicide trials in Yorkshire during the periods surveyed concerned the full offence of murder and it was left to the petty juries to make distinctions between murder and manslaughter on the evidence presented during a trial. 18.3 per cent of men benefitted from a partial verdict of manslaughter of another adult, while three women

[161] Beattie, Crime and the Courts, p. 83, Table 3.1 and p. 97.
[162] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[163] 'Other disposal' includes four men accused of murder committed on the high seas, that is, outside the jurisdiction of the courts for England and Wales. Where men were engaged by the navy, they would be handed over to the admiralty to be dealt with under separate regulations.

(30.0 per cent) benefitted from a partial verdict during the course of the periods surveyed (Table 4.4).

Unfortunately, there are few comparable gendered studies on homicide for the mid-eighteenth century. Cockburn's and Walker's studies concern earlier periods, before the benefit of clergy was made available to women.[164] As a result, Cockburn's observation on the importance of the decision reached in the coroner's court in shaping the verdict that followed at the assize trial,[165] or Walker's observation that the majority of indictments for homicide in Cheshire were couched in terms of manslaughter,[166] are not necessarily comparable for studies of the eighteenth century. The role of grand juries at the assizes for Surrey in reducing an indictment from murder to manslaughter does not appear to have been repeated in Yorkshire.[167] Therefore, as Sharpe and Dickinson observed, further research into the work of the coroner's courts is required in order to fully understand how the process operated.[168]

Sentencing practices

Table 4.5 represents a breakdown of sentences passed on men and women convicted of a homicide and provides evidence of the harsher sentencing of men and of women convicted of the more serious offences, which tends towards Beattie's supposition that judges and jurors were generally agreed on the passing of a capital sentence on those who killed in cold blood and that few would be recommended for reprieve.[169] As observed earlier, there was likely to be a very short period between conviction and carrying out of

[164] 6 Anne, c.9 s. 4 (1706) An Act for punishing felons, etc. Reading not required of Persons praying Benefit of Clergy.
[165] Cockburn, J.S. (1985) Calendar of Assize Records: Home Circuit Indictments Elizabeth I and James I, Introduction, London: HMSO, pp. 91-92.
[166] Walker, Crime, Gender and Social Order, p. 121.
[167] Beattie, Crime and the Courts, p. 80.
[168] Sharpe, James and J.R. Dickinson (2011) 'Coroners' Inquests in an English County, 1600-1800: a Preliminary Survey', Northern History, Leeds: Maney Publishing for the University of Leeds, vol. 48 (2), pp. 253-269, p. 266.
[169] Beattie, Crime and the Courts, pp. 433-434.

the sentence.[170] Matters were made worse when the Murder Act of 1752 fixed the time between conviction and execution at two days, which had the effect of limiting the scope for petitions for mercy and increased the likelihood that condemned murderers hanged, whatever their gender.[171] As convictions for petit treason were beyond the powers of reprieve of a circuit judge, and required a direct petition to the king for mercy, the situation for a woman convicted of petit treason was made all the more difficult by the time constraints imposed by the Murder Act.[172]

Table 4.5: Homicide (including infanticide) sentencing, Yorkshire, 1735-1775. [173]

	M	%	F	%
Total	**34**		**8**	
Capital sentence only	10	**29.4**	3	**37.5**
Commuted to Transportation	4	**11.8**	2	**25.0**
Branded	3	**8.8**	1	**12.5**
Branded and gaol	8	**23.5**	2	**25.0**
Gaol	0	**0.0**	0	**0.0**
Unknown	9	**26.5**	0	**0.0**
		100.0		100.0

John Wright was sentenced to death without reprieve in 1740 following his conviction of the murder of Upkin Sterling, a widow and vagrant, by beating her with a stick. The attack took place as Wright escorted her and three other vagrants to the house of correction where Wright was employed as a servant.[174] Wright's case raises issues of power and

[170] See p. 152.
[171] 25 Geo.2 c.37 (1752) An Act for better preventing the horrid crime of murder (the 'Murder Act'). The act included the stipulation that a person found guilty of murder should be executed two days after being sentenced unless the third day was a Sunday, in which case the execution would take place on the following Monday; Beattie, Crime and the Courts, p. 434.
[172] Blackstone, Commentaries, vol. 4, p. 390.
[173] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[174] TNA, ASSI 45/22/1/186-190, depositions in the matter of John Wright; ASSI 41/3, York county, March 1740; ASSI 44/56; York Courant, 17 March 1741.

criminal justice and, in that instance, Wright's position in authority over a weaker victim did not shield him and Sterling's lowly social status did not operate as an obstacle to justice. As Walker observed, just as the law was gendered, it responded to contemporary notions on class and social order, although characterisations of honour and masculine behaviour were not equally attributable to all men.[175] While social status gave weight to a 'gentleman's' interpretation of events, a man's reputation would be damaged if it were believed that he abused that authority.

32.3 per cent of men convicted of manslaughter or attempted murder and 37.5 per cent of women convicted for similar offences were sentenced to a term in gaol and/or branding during the periods surveyed (Table 4.5). The unknown sentencing in that table, relates to men convicted for manslaughter and, based on the sentencing of other cases in manslaughter, it is likely that they were also sentenced to serve a short term in gaol and/or branding. The risk to the community from a violent person could be marked in other ways and, therefore, following the conviction of Robert Stephenson for the manslaughter of another man, after thrusting a hot poker into his chest, he was sentenced to serve two years in gaol, ordered to be branded and his family bound to provide an additional £100 security for his good behaviour before his release.[176]

The absolute number of homicides represented in Table 4.5 is too small to support compelling conclusions and is made more difficult to analyse by the fact that a judge was not bound by the same constraints in sentencing a man convicted of the murder of his wife as he was for a petit treason. When sentencing for manslaughter, branding was the usual

[175] Walker, Crime, Gender and Social Order, pp. 127-129.
[176] TNA ASSI 45/21/2/53-57; TNA ASSI 41/3, Crown minutes, York, March 1738; TNA ASSI 44/52; York Courant, 29 March 1738.

punishment, although an additional requirement of a prison sentence was more widely applied to both male and female convicts by the later period surveyed.

Capital convictions and gender relationships

Capital convictions for homicide highlight specific issues of gender relationships which require further examination: attitudes to poisoning; the murder of a spouse by a husband; the murder of a spouse by a wife as a petit treason; the murder of a pregnant servant; husbands and wives as accomplices to homicide; and the murder of a child by its mother.

Attitudes to poisoning

As a *modus operandi* of men and women who killed, poisoning did not require the physical strength or speed needed for an assault with fists, a stave or a knife, or the accuracy for firing a gun. Poisoning within the home was of particular concern and contemporary opinion was that if one spouse was in fear of being poisoned by the other, it provided "good Cause to pronounce Sentence of Separation".[177] Poisons were readily available in the market place and could be administered in small doses so that the eventual death might appear as the result of an everyday illness. According to the evidence for Yorkshire and research undertaken by, *inter alia*, Beattie and Walker, poison was neither the preferred *modus operandi* of women who killed nor a method reserved solely to them.[178] Nevertheless, contemporary opinion was that poisoning was "a Crime much oftener committed by Women than by Men, for they having it in their Power, nor perhaps in their Will, to avenge themselves openly on such as offend them".[179] As the weapon of

[177] Anon., (1732) A Treatise of Feme Coverts: or the Lady's Law; London, p. 167.
[178] Beattie, J.M. (Summer, 1975) 'The criminality of women in eighteenth-century England' Journal of Social History, vol. 8 (4), pp. 80-116, p. 83; Walker, Crime, Gender and Social Order, pp. 144-145.
[179] Anon. (1752) A Warning Piece Against the Crime of Murder: or, an account of many extraordinary and most providential discoveries of secret murders. ... Collected from several authors, London: Printed for William Owen, London; and R. Goadby, in Sherborne, p. 124.

choice for some women it provided evidence of female deviousness going back to the time of Eve and was interpreted as a violation of a fundamental law of nature. Not only did it imply malice aforethought but "it clearly violated the trust every man had to place in his wife when he sat down to his dinner".[180]

In Yorkshire, at least, the number of men and women accused of murder by poisoning was very small and in other regions of the country there is evidence that some women found it possible to escape the gallows for a petit treason committed by poisoning, particularly when they had the support of a senior member of the community.[181] Seven men and two women were alleged to have used poison to murder their victims during the periods surveyed for Yorkshire, albeit that those numbers represent a higher percentage of female than male defendants. Elizabeth Webster was convicted and sentenced to death for the murder of her husband by poisoning in 1743,[182] while Ann Sowerby was convicted of the same offence in 1767 and sentenced to burn at the stake.[183] In contrast, when James Browne was convicted of the murder of his wife by poisoning, his sentence was commuted to transportation. [184] In slightly different circumstances, John Scott was convicted of murdering his servant (who already had a three year old child by him) by giving her a fatal abortifacient.[185] Sir Henry Gould was the presiding judge at Scott's trial; he made no recommendation for mercy but added a requirement that Scott's dead body be dissected and anatomized after he had been hanged. However, a private petition for mercy must have

[180] Hufton, Olwen (1996) The Prospect Before Her: A History of Women in Western Europe, vol. 1, 1500-1800, New York: Alfred A. Knopf, p. 57; and see also McLynn, F. (1989) Crime and Punishment in eighteenth-century England, London and New York: Routledge, p. 119.
[181] Gough, Richard (1979, first written 1701-1706) The History of Myddle, London: Macdonald Futura Publications, pp. 91-93. Elizabeth Hadden 'a wanton widow' of Myddle conspired with other women of the town who had grown 'weary of their husbands' to poison their spouses. Only Hadden was successful in this venture and subsequently sentenced to death, although, through the intervention of her father and former employer she was reprieved and even went on to marry again.
[182] TNA ASSI 41/3, Crown minutes, York, March 1743.
[183] TNA ASSI 42/8, York county, August 1767.
[184] TNA ASSI 41/3, Crown minutes, York, March 1767.
[185] TNA ASSI 45/31/2/157-158; TNA ASSI 42/8; TNA, ASSI 41/6, York County, July 1774.

been made by a person or people of influence (although it has not been located) because by the following assizes his sentence had been commuted to transportation.[186]

The statutory conditions of petit treason stipulated a capital sentence without the benefit of a clergy and for which no judicial recommendation for mercy was possible;[187] although that should not have prohibited a private petition being made by sympathetic friends and family. Poisoning was not the sole preserve of women, but the law allowed for the different sentencing of male and female perpetrators, even when the *modus operandi* were almost identical. The disparity in sentencing of men and women is both evident, and inevitable, when they were convicted for the murder of a spouse, because the law required that they be judged by different criteria.[188]

There were ten allegations of the murder of a woman by her husband and three accusations against a woman for petit treason in the assizes for Yorkshire during the periods surveyed. The outcome was the full or partial conviction of five men and three women for that offence, or 50.0 per cent of husbands and 100.0 per cent of wives who killed their spouse. These figures indicate the greater condemnation by petit juries of women who killed their spouses in comparison with husbands who abused and ultimately killed their wives.

Murder of a wife by her husband

Cases concerning the murder of a wife by her husband demonstrate both the level of 'acceptable' violence by way of 'marital chastisement' in early modern England and the relative failure of the judiciary to treat the offence as one demanding particular attention.

[186] TNA E 389/245 f. 462, May 1775, record of fees paid for transportation of convicts.
[187] Blackstone, Commentaries, vol. 4, p. 390.
[188] Walker, Crime, Gender and Social Order, p. 158.

That failure arose from the position of a man as master of his family from which his 'natural authority' excused, if not condoned, displays of excessive force towards his wife.[189] From data of homicides in Cheshire between 1590 and 1649, Walker observed that only one husband out of eight (12.5 per cent) suspected of having killed their wives was convicted of murder. Although the number of offences for Yorkshire is very low, there is some slight evidence of a greater reluctance in eighteenth-century Yorkshire to allow domestic autonomy to justify excessive violence.

When George Bulmer was convicted of the murder of his wife by strangulation, the evidence against him was compounded by damning circumstantial evidence that the day before the murder, Bulmer had sexually propositioned a former female employee and suggested that he was prepared to kill his wife and look after the woman if she became pregnant. [190] The presiding judge, Sir Henry Gould, did not recommend Bulmer for mercy but ordered that he be hanged and that his body be delivered to the surgeons to be dissected and anatomised.[191] That decision stands in contrast to Henry Bathurst's when he recommended that the aforementioned James Browne be transported for seven years after his conviction for the murder of his wife by poisoning.[192] In those circumstances one might expect a man who poisoned to be more greatly condemned for having stooped to the deceptive tactics normally associated with a woman.

Sir Henry Gould was also the judge at the trial of William Canswick, who was charged with the murder of his wife by beating in 1771 but acquitted of both her murder and her

[189] Bailey, Joanne (2010) 'Cruelty and Adultery: Offences against the Institution of Marriage', Kilday, Anne-Marie, David S. Nash (2010) Histories of Crime: Britain 1600-2000, Basingstoke: Palgrave Macmillan, pp. 39-59, p. 40.
[190] TNA ASSI 45/32/1/42.
[191] TNA ASSI 42/9; TNA ASSI41/7, assizes York county, July 1775.
[192] TNA ASSI 45/28/3/28B-28E; TNA ASSI 42/8, assizes York county March 1767.

manslaughter.[193] At the coroner's inquest nine witnesses gave evidence as to the brutality of William Canswick's attack on his wife and the deposition evidence of examining surgeon, John Readman, was that her death "has been brought on by some violent extreme injury given and received".[194] However, on the day of the trial Readman was taken ill and was unable to give evidence in court; in his absence the deposition statement was inadmissible as 'hearsay' evidence. Gould did not adjourn the trial to another date and without medical evidence to establish the link between the giving of the blows and the cause of death, an acquittal was inevitable.[195] It was, perhaps, Gould's failure to postpone the trial that provides the greatest evidence in this case of the prevailing attitudes and acceptance of domestic violence. To add insult to injury, Readman was excused from forfeiting his recognizance to appear because of his ill health.

While homicide attracted a capital sentence, a husband convicted of the manslaughter of his wife might escape with an order to be branded and/or serve short term in gaol. Michael Smith had a long history of domestic abuse towards his wife and the victim was known to have been pregnant both at the time of an earlier and the final assaults.[196] Smith was convicted of manslaughter and ordered to be branded and serve a term of three months in gaol. Smith's defence was that his wife had been verbally abusive to him over the course of one evening and that on two occasions he "struck her moderately upon her face but not with an intent to kill her".[197] The operative word was 'moderately', and Smith's statement to the examining magistrate surely reflected contemporary opinion on the use of

[193] TNA ASSI 45/30/1/30-31B; TNA ASSI 41/6, assizes York county March 1771.
[194] TNA ASSI 45/30/1/30-31B; TNA ASSI 41/6, assizes York county March 1771.
[195] 14 Geo. II, c.17 (1741) An Act to Prevent Delay of Cause after Issue Joined; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Private Wrongs, vol. 3, Oxford: Clarendon Press, p. 357.
[196] TNA ASSI 45/31/1/281, examination of Michael Smith, 3 July 1773.
[197] TNA ASSI 45/31/1/281, examination of Michael Smith, 3 July 1773.

'reasonable chastisement', even when the outcome was anything other than moderate and it completely ignored the fact of her pregnancy.[198]

Petit treason

When a man's violence towards his wife, child or servant was perceived in terms of the 'natural' authority a man held as head of his household; reciprocal violence by a wife or servant was subversive and a threat to social order. Elizabeth Webster[199] and Ann Sowerby[200] are the only women found to have been convicted of petit treason in the records surveyed. Both women poisoned their husbands and were sentenced to burn at the stake. Records from the enquiry into the murder of William Webster include statements taken from the examining surgeon and eleven male and three female witnesses. Statements from neighbours provided evidence of arguments between the couple concerning the wife's affair with another man and outbursts in which she exclaimed that she wished her husband dead.[201] One witness failed to appear in court to give his evidence and, although sufficient witnesses remained to secure her conviction, Hargreaves was one of the few witnesses noted in the records as being required to forfeit his recognizance to appear, indicating the determination of the court to secure the conviction of a woman who killed her husband and master.[202]

The court records note that Webster successfully 'pleaded her belly' and, therefore, her sentence would have been respited until the birth of her child, following which her sentence was possibly commuted to transportation.[203] Following Ann Sowerby's

[198] See p. 56.
[199] TNA ASSI 45/22/3/98-101; TNA ASSI 41/3, Crown minutes, York, August 1742; TNA ASSI 44/58; York Courant, 19and 26 July 1743.
[200] TNA ASSI 42/8; TNA ASSI 41/5, York county, August 1767.
[201] TNA ASSI 45/22/3/100-101, witness depositions, 9 July 1743.
[202] TNA ASSI 45/22/3/100-101, witness depositions, 9 July 1743.
[203] It has not been possible to find a report confirming whether Webster was burnt at the stake or reprieved for some other sentence following the birth of her child.

conviction for petit treason, she too attempted to escape a capital sentence by 'pleading her belly' but her claim was rejected by the jury of matrons who examined her.[204] The same presiding judge (Henry Bathurst) who recommended James Browne for a reprieve, following his conviction for poisoning his wife, was unable to reprieve Sowerby and she was burnt at the stake on 10 August 1767.[205] The cases of Browne and Sowerby highlight the different nature of the offences of petit treason and homicide and, although few women were convicted of petit treason, those that were would not expect to be shown any mercy.

In contrast to petit treason, a wife convicted of the manslaughter of her husband could be sentenced to be branded and/or to serve a short term in gaol, on the same terms as a man similarly convicted for causing his wife's death. Elizabeth Eagle was convicted of the manslaughter of her husband in 1772.[206] No depositions have been located explaining her version of events but evidence produced to the coroner's court was that Eagle, her sister and her mother, set upon William Eagle following an earlier argument, with the inference that it was a premeditated assault. While the grand jury dismissed the bill against the older woman, the element of premeditation and the nature of the joint assault added to the gravity of the charges against Eagle and her sister. They were convicted of manslaughter and each sentenced to be branded and to serve a term of eleven months in the house of correction.[207] Sir Henry Gould was the presiding judge in three cases involving the manslaughter of a spouse and concerning Michael Smith, Richard Wombersley and Elizabeth Eagle. The partial verdicts passed on each defendant were made within eighteen months of each other and, therefore, one might expect similar sentences to follow. Instead, the anti-female bias of the law becomes evident when comparing the sentencing of Eagle

[204] TNA ASSI 42/8; ASSI 41/5 assizes for the county of York, August 1767. See p. 151.
[205] The Gentleman's Magazine, vol. 37, 1767, p. 427, in the matter of Ann Sowerby.
[206] TNA ASSI 45/30/2/48-54D; TNA 41/6 York county, August 1772; TNA E 389/245 f. 171.
[207] TNA ASSI 45/30/2/48-54D; TNA 41/6 York county, August 1772; TNA E 389/245 f. 171.

to imprisonment for eleven months, while Smith and Wombersley were imprisoned for three and six months respectively.

Servants

Servants who killed their masters or mistresses were guilty of petit treason, for which a female servant would burn and a male servant hang. When Thomas Butler was unsuccessful in his attempt to poison his master he was convicted of a misdemeanour and sentenced to a term of two years in gaol, at a time when other men convicted of manslaughter might expect to be released immediately after being branded on the hand.[208] On the other hand, masters and mistresses were entitled to chastise a servant and, as Beattie argued, "a parent or master who used 'moderate' methods and a 'reasonable' instrument in chastising those over whom they had natural authority would have been acquitted of both murder and manslaughter".[209] Female servants were particularly vulnerable, especially if they became pregnant by a member of the family they served. In the case of the aforementioned John Scott, who was convicted of the murder of his servant Hannah Stock by giving her a poisonous abortifacient, the fact that she already had one child by him and his intention was to abort another added to the severity of his crime.[210] In 1775, John Bolton was accused of strangling his servant, Elizabeth Rainbow.[211] Bolton was a married man with five children who six years previously had taken in a young boy and girl (Elizabeth Rainbow) from a local foundling hospital to work and live in the family home.[212] It is likely that Rainbow was in her teens when she died and the enquiry into her death revealed that she was pregnant with Bolton's child at the time of her death. Bolton

[208] TNA ASSI 41/3, Crown minutes, York, March 1741.
[209] Beattie, Crime and the Courts, p. 86.
[210] TNA ASSI 45/31/2/157-158; TNA ASSI 42/8; TNA, ASSI 41/6, York County, July 1774.
[211] Anon. York Castle Museum: conviction of John Bulmer, http://www.yorkcastleprison.org.uk/family-history/condemned/Rainbow, accessed 10 July 2012.
[212] Williamson, W. (c.1775) The Trial at Large of John Bolton, Gent., York: published agreeable to the Order of the Justices.

was convicted of her murder, sentenced to hang and his body dissected and anatomized, although he committed suicide in prison before the sentence could be carried out.

King observed the significance placed on the physical appearance of a woman in judicial proceedings from his study of eighteenth-century Essex;[213] while Palk drew attention to relevance of both the physical appearance of female servant and the power of a master to force a servant to submit to his wishes.[214] While it is clear from a broadside report of Bolton's case that he was publicly condemned for his actions, the article also reports the prosecutor's reference to the victim's good looks in connection with the temptations to her master. He stated in his opening speech that "it was to be her misfortune to be handsome", as if to explain Bolton's behaviour, and it serves to underline the difficult position of a young girl living in close proximity with those on whom she was wholly dependent for her support and well-being.[215]

Husbands and wives as accomplices to homicide

There are few examples of husbands and wives jointly accused of murder, possibly because some women were deemed to have been under control of their husbands and their names are hidden from the court records. That situation may have arisen when accusations were weeded out at the coroner's court, if a husband was deemed the more culpable as the stronger willed (in theory) and, therefore, fewer indictments against a compliant wife would be pursued, although this is another potential area for future research. However, not all women were exculpated on the grounds of their subservience to the will of their 'lord

[213] King, Peter (2000) Crime, Justice and Discretion in England 1740-1820, Oxford: Oxford University Press, pp. 284-285.
[214]Palk, Deidre (2006) Gender, Crime and Judicial Discretion, 1780-1830, Suffolk: The Boydell Press, p. 169.
[215] Malcolmson, R.W. (1977) 'Infanticide in the Eighteenth Century' in Cockburn, J.S. (ed.) Crime in England 1550-1800, London: Methuen & Co Ltd, pp. 187-209, p. 202: Malcolmson found that approximately 70 per cent of the women indicted for infanticide before the Old Bailey between 1730 and 1774 whose occupations are known were servants; Lindemann, Barbara S. (Autumn, 1984) 'To Ravish and Carnally Know: Rape in Eighteenth-Century Massachusetts', *Signs*, *vol.* 10, No. 1, pp. 63-82, p. 79, 81.

and master'. In 1736 husband and wife, Charles and Sarah Cadogan were indicted for the murder of Frances Cousins. Both were acquitted of her murder but convicted of manslaughter.[216] In that instance, no distinctions were made between the part taken by either the husband or wife and they were each sentenced to be brand on the left hand before being discharged from the court. Later in the century, Luke and Dorothy Atkinson were jointly convicted of the murder of an adult male and both were sentenced to hang. An additional order meant that the husband's body was to be sent to a surgeon, to be dissected and anatomized.[217] There is no evidence to suggest that either had their sentence reprieved for transportation or a petition for mercy on grounds of coverture and, therefore, no evidence of the more lenient treatment of a woman just because she was under the control of her husband at the time the crime was committed. This material supports Blackstone's outline of the law, in which he stated that coverture would not operate in cases of murder and treason.[218]

Infanticide

While women were condemned for the homicide of their spouse, the judicial process demonstrates different attitudes towards a woman accused of murdering her new-born child (infanticide). The social and legal differences conferred by marital status meant that only an unmarried mother could be tried under the 1624 Act, where the burden fell on her to prove her innocence if there was evidence that she had concealed the birth. This thesis does not repeat the excellent work already undertaken by Mark Jackson, using similar records from the Northern Circuit: rather, the aim of this section is to embed his analysis of the issue within the overall assessment of gender and crime, with an emphasis on the female experience within the judicial system. Although the "the distinctions between

[216] TNA ASSI 41/3, Crown minutes, York City, August 1736.
[217] TNA ASSI 42/8; TNA ASSI 41/6; TNA ASI 44/86, York county, March 1771.
[218] Blackstone, Commentaries, vol. 4, 432.

miscarriage, still birth, neglect, and murder were open to varying interpretations, both for the law and for the mother",[219] a comparison of the procedural and evidential rules for murder and infanticide highlight the more onerous position for the unmarried mother trying to establish her innocence.

Once a member of a household or neighbour suspected that a woman had concealed a birth, constables and overseers of the poor (usually supported by a warrant from a magistrate or coroner) were able order a verbal and physical examination of the woman and organise a search of the vicinity in order to discover the child's body. [220] When John Hildray, an overseer of the poor for Sexhow in the North Riding of Yorkshire, became suspicious that Margaret Baker (the mother of three other bastard children) was pregnant, he reported his suspicions to a local yeoman, George Flounders.[221] Flounders and Hildray wanted Baker to be brought before a magistrate to give evidence of the putative father, in order to bind him for its upkeep. Although Baker was later accused of infanticide, the motivation for questioning her was to identify the father of the child. A review of bastardy examinations at the quarter sessions for Beverley in the East Riding of Yorkshire puts the instances of infanticide into perspective when it demonstrates that many unmarried, pregnant women proceeded with their pregnancies. During the period 1765-1775, there were 192 bastardy examinations in that riding, compared with twenty-one indictments of women for infanticide for the whole of Yorkshire during the same period. As Hoffer and Hull observed, "95 per cent of the unmarried women who brought bastards into the world did not murder the children".[222] Jackson questioned assumptions made by historians such

[219] Gowing, Laura (1997) 'Secret Births and Infanticide in England', Past and Present, vol. 156 (1), pp. 87-115, at p. 107; Schulte Regina (1994) The Village in Court: Arson, Infanticide, and Poaching in the Court Records of Upper Bavaria, 1848-1910, New York and Cambridge: Cambridge University Press, p. 104-105, 109-110, in which Schulte links high child and infant mortality rates to the practice of deliberate neglect.
[220] Jackson, New-Born Child Murder, pp. 77-78, 86.
[221] TNA ASSI 45/30/1/22-26, depositions in the case of Margaret Baker, taken June 1771.
[222] Hoffer, P.C. and N.E.H. Hull (1981) Murdering Mothers: Infanticide in England and New England 1558-1803, New York and London: New York University Press, p. 145.

as Sharpe and McLynn who claimed that the actual crime rate for infanticide greatly exceeded the number of cases brought to court.[223] Jackson argued that the diligence of local people in acting on their suspicions and undertaking enquiries meant that the greater majority of new-born child murders were probably brought to the attention of the coroner or magistrate.[224] Nevertheless, while Meg Arnot writes about the suggestions for the medical policing of working-class women in response to concerns about child-care and abortion practices in the nineteenth century, without the benefit of a pubic police force in the eighteenth century, local parishes remained reliant on informal policing within each community.[225]

The general level of understanding of gynaecology was fairly limited during the eighteenth century, so that signs of pregnancy and birth might be misinterpreted.[226] When Margaret Baker was accused of infanticide, the grounds for the charge came from a local man who suspected that she had recently given birth to a child because she did not seem to be as big as she had been the previous week. [227] A physical examination of Baker was carried out by five women, including a local midwife. Although they examined her breasts, there was no mention of a vaginal examination and Baker accounted for the milk in her breasts because she continued to suckle her two and a half year old child. Baker suggested that her body may have appeared swollen during that time because she had experienced a 'false conception', although she strongly denied that she had been pregnant. The three women who examined her each stated their belief that Baker must have recently given birth to a child, although the 'false conception' might today be explained by a miscarriage or an abortion. Baker was committed for trial, despite the absence of evidence of the

[223] Jackson, New-Born Child Murder, p. 12; Sharpe, J.A. (1983) Crime in seventeenth-century England: a county study, Cambridge: Cambridge University Press, p. 137; McLynn, Crime and Punishment, p. 114.
[224] Jackson, New-Born Child Murder, p. 12. See p. 41.
[225] Arnot, M.L. (1994) 'Infant death, child care and the state: the baby farming scandal and the first Infant Life Protection Legislation of 1872', Continuity and Change, vol. 9 (2), pp. 271-311, p. 287.
[226] Gowing, 'Secret Births', at p. 91.
[227] TNA ASSI 45/30/1/22-26, depositions in the case of Margaret Baker, taken June 1771.

delivery of a baby or its concealment as required under the statute.[228] In those circumstances, Baker was inevitably acquitted.[229]

Gowing interpreted the reasons why some single women explained their physical condition in terms of colic or dropsy, but "never pregnancy", as being due to their exclusion from the world of child birth, which was the prerogative of married women.[230] However, that interpretation does not allow for the likelihood that many daughters would be aware of the physical changes experienced by their mothers as they grew up in small houses with shared facilities, and during which time the mother might experience several pregnancies. The inaccuracy in detecting pregnancy and infanticide was increasingly blamed on the matters of "decency" which meant that investigations were "generally committed to midwives, ignorant persons, who have no knowledge of the animal œconomy, and may easily be deceived".[231] In four cases of new-born child murder presented to the coroners' court in 1765 Jane Brown,[232] Mary Dixon,[233] Mary Pemberton[234] and Elizabeth Webster,[235] had each denied earlier questions as to their suspected pregnancies. When "common report prevailed" that Jane Brown was with child, a midwife and some other women of the town were asked to examine her. Having done so, they declared that she was not pregnant, even though at the time of the examination she would have been about four months pregnant.[236] Their evidence indicates a fairly rudimentary level of medical understanding by unqualified midwives and local matrons, although, their finding that Brown was not yet 'quick with child' may only mean that they were unable to

[228] TNA ASSI 45/30/1/22-26; Jackson, New-Born Child Murder, p.78 - n. 105.
[229] TNA 41/6; TNA ASSI 44/86, York county, July 1771;
[230] Gowing, 'Secret Births', at p. 97.
[231] Farr, Samuel (1788) Elements of medical jurisprudence, or, A succinct and compendious description of such tokens in the human body as are requisite to determine the judgment of a coroner, and of courts of law, in cases of divorce, rape, murder, &c. : To which are added, directions for preserving the public health, Printed for T. Becket, p. 7.
[232] TNA ASSI 28/1 ff. 2-6.
[233] TNA ASSI 28/1 f. 17.
[234] TNA ASSI 28/1 ff. 68 and 134-135a.
[235] TNA ASSI 28/1 ff. 68 and 134-135a.
[236] TNA ASSI 28/1 ff. 2-6.

feel the movement of a baby in her womb.[237] Nonetheless, the uncertainty of prevailing medical knowledge as to the indicators of pregnancy made it difficult for even mid-wives and medical practitioners to distinguish between a pregnancy and other abdominal complaints.[238]

In three of the aforementioned cases Mary Dixon,[239] Mary Pemberton[240] and Elizabeth Webster,[241] each gave birth alone in their rooms. Given the absence of medical care during lone births in bedrooms, many mothers must have died during childbirth whether married or not. Although it is outside the scope of this thesis, this area of enquiry would benefit from an examination of coroner's records for records of all women who died in childbirth, in order to discover further evidence of the extent of child murders and abortion. One reason why contemporary authors on medical jurisprudence were concerned about inaccurate findings of pregnancy and infanticide was because "so many decisions both in civil and criminal courts [were] dependent upon pregnancy".[242] Consequently, even across the spectrum of rape, pregnancy, childbirth and infanticide there was an undercurrent of concern about rights to property that ran very close to the surface.

Where there was evidence that an unmarried woman had attempted to conceal the body of a new-born child, the most common defence put forward was that she had made some provision for the birth of the baby, such as making or obtaining clothes and blankets for it. The coroner's report in the matter of Mary Ingleson alleged that she tried to strangle her baby, that she had made no provision for the child and that she concealed the birth by

[237] Jackson, New-Born Child Murder, p. 170.
[238] Jackson, New-Born Child Murder, p. 62.
[239] TNA ASSI 28/1 f. 17.
[240] TNA ASSI 28/1 ff. 68 and 134-135a.
[241] TNA ASSI 28/1 ff. 68 and 134-135a.
[242] Farr, Elements of medical jurisprudence, p. 3.

burying the body in a dunghill.[243] At her trial, Lord Abney drew attention to the report of concealment as being evidence of murder.[244] Nevertheless, despite the absence of preparations for the birth and Abeny's direction on concealment, she was acquitted. Ingelson's case illustrates the ability of jurors to steer their way between public misgivings as to the weight to attach evidence of concealment, parochial anxiety over the poor rate and emerging humanitarian concerns.

Table 4.6: Infanticide, Yorkshire, 1735-1775. [245]

	M	%	F	%
48	**3**	**6.3**	**45**	**93.8**
Total	**3**		**45**	
Discharged for want of prosecution	0	**0.0**	2	**4.4**
Not guilty	3	**100.0**	37	**82.2**
Guilty	0	**0.0**	2	**4.4**
Unknown	0	**0.0**	4	**8.9**
		100.0		100.0

As concealment of a child's body created a presumption of guilt it must have been the case that judges allowed other circumstances to be taken into account,[246] enabling juries to take a more lenient approach to other women accused of that offence when only 4.4 per cent of women charged were convicted of the offence (Table 4.6). Despite the number of allegations for infanticide recorded in Table 4.6, Elizabeth Conney was the only woman convicted of infanticide during either of the periods surveyed.[247] In her statement, Conney asserted that she did not inform anyone of her pregnancy, that she gave birth to a still-born child alone in a room in her mother's house and that she later concealed its body. However,

[243] TNA ASSI 44/56, indictment; ASSI 45/22/3/57-60, depositions 1743.
[244] TNA ASSI 41/3, Crown minutes, York, 12 March 1743, note by legal clerk of Lord Abney's direction.
[245] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[246] 21 Jac. I, c.27 (1624).
[247] TNA ASSI 41/3, Crown minutes, York; TNA ASSI 44/59, York county, July 1744. See the case of Ann Nell at p. 197, convicted of murdering a child aged one year and three months.

deposition statements from the women who examined the body of the child noted cuts to the mouth and neck of the child.[248] Following her conviction, the trial judge recommended Conney for mercy and her capital sentence was commuted to transportation for fourteen years. No reason is given for that beyond the usual 'fit object for mercy' in the circuit memorial. Given the serious nature of the offence, the admission of birth and concealment of the body, the recommendation for a reprieve does not make sense unless the trial judge was moved by the possible youth of the accused, his belief that the child was still-born, a persuasive plea for mercy presented in court and/or a general sympathy for the plight of unmarried mothers and the harshness of the law.[249]

There are several explanations for the failure of juries to convict women for infanticide. Hoffer and Hull assert that judicial and public opinions were softening towards women charged with infanticide,[250] while Sharpe concluded that infanticide was in decline by the latter part of the eighteenth century because of an increasing failure to prosecute or convict women for that offence, rather than the failure of the statute.[251] Jackson, however, points to the severity of the statute as adversely affecting conviction rates when, of about 200 women indicted in the Northern Circuit courts between 1720 and 1800, only six women were found guilty, of which only two women were hanged.[252] He argued that it became increasingly the case that petty juries shied away from an automatic assumption of a woman's guilt when there was evidence of concealment and required some particularly damning evidence to secure a conviction that went beyond the statutory presumption of guilt, such as physical injuries to the body of the child.

[248] TNA ASSI 45/22/4/31-33A.
[249] A study of the long dureé of concealment legislation between 1624 and 1803 is necessary, examining whether the reluctance of juries convict under terms of the 1624 Act was a feature of earlier periods.
[250] Hoffer and Hull, Murdering Mothers, pp. 65-91.
[251] Sharpe, J.A. (1999, first edition 1984) Crime in Early Modern England, 1550-1750, London and New York: Longman, pp. 87-88. Sharpe acknowledged that the statistical evidence of a decline in the number of indictments for infanticide fails to account for the possibility that many infanticides were indicted as simple homicides.
[252] Jackson, New-Born Child Murder, p. 3.

Servants were vulnerable to the demands of their masters, particularly so in the case of a female domestic servant, which was not helped by the common association in the minds of society generally between domestic service and theft, illicit sex, pregnancy and infanticide.[253] It is no surprise that other investigations into court records for the eighteenth century have concluded that: most acts of new-born child murder were undertaken by women who were generally drawn from the lower orders; they were usually unmarried; often servants; and the child usually killed at birth, the sex of the baby being irrelevant.[254] Evidence from deposition statements taken in Yorkshire as to profession or living accommodation of women charged with new-born child murder indicates that many of them were domestic servants, living with or near their employers. Surveys by Beattie and Malcolmson found that as many as two-thirds of the women charged under the infanticide statute at the Surrey assizes were servants,[255] and that more than one half of infanticide cases at the Old Bailey between 1730 and 1774 involved servants.[256] The fact that many servant girls appear to have given birth in secret in their employers' houses is remarkable since it required a woman to keep her pregnancy secret until a very late stage. In such circumstances, secrecy surrounding the birth and concealment of the baby's body were often the elements of the crime which made detection of the crime and proof of guilt very difficult. It also raises the question of whether other members of the household really were

[253] Gowing, Laura (2001) 'Ordering the body: illegitimacy and female authority in seventeenth-century England', in Braddick, Michael J. and John Walter (editors), Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland, Cambridge: Cambridge University Press, pp. 43-62, p. 46.

[254] Dickinson, J.R. and Sharpe, J.A. (2002) 'Infanticide in early modern England: the Court of Great Sessions at Chester, 1650-1800', in Jackson Mark (editor) Infanticide: Historical Perspectives on Child Murder and Concealment, 1500-2000, Aldershot: Ashgate Publishing Limited, pp. 35-51 at pp. 48-49; for a micro history on the servant and infanticide see Masciola, A.L. (2002) 'The unfortunate maid exemplified: Elizabeth Canning and representations of infanticide in eighteenth-century England', in Jackson Mark (editor) Infanticide: Historical Perspectives on Child Murder and Concealment, 1500-2000, Aldershot: Ashgate Publishing Limited, pp. 52-72

[255] Beattie, Crime and the Courts, p. 114,Table 3.6.

[256] Malcolmson, 'Infanticide in the Eighteenth Century' p. 202.

ignorant of a pregnancy or whether a 'blind eye' was turned unless, or until, the discovery of a baby's body forced them to address the matter.

In circumstance where the cost of bastard children was a concern to parish members it seems a contradiction to find so many parishes going to the expense of prosecuting the mother for infanticide when it may just have easily been passed it off as a still birth, even more so if it left any other children of that mother to be maintained by the parish. One explanation concerns the notion of shame, in that prosecutions stemmed from a need to deter women from producing bastard children, so that the prosecution of one might serve as a warning to others. An unmarried woman had little to gain from informing her parents or employer that she had given birth to an illegitimate child that had died and hiding evidence of the birth protected her from the stigma of her situation and the likely loss of employment and/or accommodation should the birth be discovered, although it also carried the risk of prosecution.[257] In one Yorkshire parish, an unmarried woman who was found to be pregnant would be made to stand before the church wearing white robes of shame as an act of penance, a practice that was not abandoned until the 1820s.[258] As with other forms of public punishment, the theatre of public shaming also served as a deterrent to other young women at a time when reputation was a valuable commodity for all except the 'lewd' poor. Jackson similarly argued that while prosecution rates fell in relation to the rising levels of population and illegitimacy; by remaining fairly constant as an absolute number they stood as a warning to others.[259] Surveys of eighteenth century Cheshire and Surrey assizes reveal a fairly even reduction in the rate of indictments for infanticide between 1700 and 1800,

[257] Gowing, 'Secret Births', at p. 88; Wark, Keith R, M.A., (1998) 'Domestic Servants in Leeds and its Neighbourhood in the Eighteenth Century', Miscellany, Publications of the Thorseby Society, second series, vol. 8, Leeds: Thorseby Society for The Leeds Historical Society, pp. 1-16, p. 3; McDonagh, Josephine (2003) Child Murder & British Culture 1720-1900, Cambridge: Cambridge University Press, p. 2.
[258] Gillis, John R. (1985) For better, for worse: British marriages, 1600 to the present, New York, Oxford: Oxford University Press, p. 131, n. 131, concerning practices in Pickering, West Yorkshire.
[259] Jackson, New-Born Child Murder, p 3 and p.26, n.61.

when the figures almost halved over the course of each 50 year period.[260] Falling prosecution rates are a reflection of changing attitudes over time. At the end of the sixteenth century indictments for infanticide were viewed in terms of punishing immorality, whereas by the end of the eighteenth century there was far greater awareness of the vulnerability of domestic servants, in particular, and doubts about the accuracy of forensic evidence available, demonstrated by two attempts during the 1770's to repeal the 1624 statute.[261]

In explaining falling prosecution and conviction rates, Jackson argued that those who assume the guilt of single women and the leniency of jurors fail to take account of contemporary doubts as to the guilt of those women expressed by the legal and medical professions. [262] Indictments in Yorkshire do not tend to define the offence as 'infanticide' but in accordance with the statute of 1624 state that the child was born alive, that it was a bastard child, and the means by which the mother killed it.[263] Evidence of those 'means' elicited by the examining surgeons was frequently compromised by the fact that the bodies of the children had been moved and tampered with by those who hid and those who found the bodies prior to a medical examination. Depositions taken in Yorkshire refer to examinations to find any marks of assault on the bodies of the babies, together with growing doubt amongst the medical community as to the infallibility of the lung test[264] and support Jackson's observations on the growing reliance on medical evidence in establishing the cause of death.[265]

[260] Dickinson and Sharpe, 'Infanticide', pp. 49-50; Beattie, Crime and the Courts, p. 115, Table 3.6.
[261] Beattie, Crime and the Courts, p. 114; McDonagh, Child Murder, p. 95
[262] Jackson, New-Born Child Murder, p. 11, referring to Hoffer and Hull, Murdering Mothers; and Malcolmson, 'Infanticide in the Eighteenth Century', pp. 187-209.
[263] 21 Jac. c.27 (1624); Hale, Sir Matthew (1736, first published 1680) *Historia placitorum coronae*: The History of the Pleas of the Crown, vol. 2, London, pp. 190, 288; Jackson, New-Born Child Murder, p. 18.
[264] Farr, Elements of medical jurisprudence, p. 59; Jackson, New-Born Child Murder, pp. 93-100.
[265] 25 Geo. II c.29 (1752); Jackson, New-Born Child Murder, p. 88.

The medicalization of women's criminal behaviour following the birth of a child was at its very early stages during the eighteenth century, although there was an emerging awareness of puerperal insanity and the possibility that new mothers should not be held fully responsible for their actions.[266] The defence of insanity was not readily raised since it first required a guilty plea to the indictment and was only admitted in order to explain a person's actions and to minimise the ensuing sentence. If the defence failed, the admission of guilt meant that the accused would be sentenced for the full offence. While Rabin found evidence of an emerging awareness of temporary insanity arising from the pregnancy and childbirth during the eighteenth century, she also found that until at least the 1770s the application of a defence based on the mental health of a new mother was more likely to be available for a married woman than a single mother.[267] It was not until the nineteenth century that poorly thought out methods of concealment came to be interpreted as evidence of the impetuous behaviour of an irrational and unmarried woman.[268]

Although Kilday observed that the law on infanticide was not enforced on a regular basis after 1740, the evidence from Yorkshire is that a reluctance to convict an unmarried woman of infanticide began much earlier than that.[269] Likewise, the conviction rate of one woman in Yorkshire for infanticide during the entirety of the two eleven year periods surveyed does not wholly support the observations of feminist historians, such as Zedner, that women were judged as criminals or deviant, for activities that would go unpunished if committed by men; particularly when that concerned any display of sexual freedom and

[266] Jackson, New-Born Child Murder, p. 128.
[267] Rabin, Identity, Crime and Legal Responsibility, pp. 97, 103.
[268] Grey, Daniel J.R. (2008) 'Discourses of Infanticide in England, 1880-1922', unpublished PhD thesis, Roehampton University, p. 202, noting that the conflict between medicine and law over the relationship between insanity and criminal responsibility in trials for the murder of new-born children continued throughout the nineteenth century.
[269] Kilday, Anne-Marie (2010) 'Infanticide in Britain since 1600', Kilday, Anne-Marie, David S. Nash (2010) Histories of Crime: Britain 1600-2000, Basingstoke: Palgrave Macmillan, p. 64; see Jackson, New-Born Child Murder, p. 3; see p. 190 above.

the offence was one that could only be committed by a woman, such as infanticide. [270] Nevertheless, the accusation of infanticide, the prosecution process and any time spent on remand in gaol might in itself be deemed a punishment for woman who had recently given birth to a baby alone and in distressing circumstances in which her child died.

While men were occasionally accessories to infanticide, there was also a continuum of male violence against foetuses (as there still is) as some men encouraged or forced their partners to attempt an abortion and a few others murdered their pregnant wives or servants (combining femicide with foeticide). If neither of these events occurred, the putative father might occasionally be involved in the death of a new-born child.[271] John Hoggart and Henry Brown were the only men to appear at the assizes during the earlier period surveyed in connection with an infanticide. Margaret Risdale was Hoggart's servant and, although it was suspected that Hoggart was the father of her baby, he and Brown were jointly accused of the murder of the baby, although the bill against Brown was rejected by the grand jury and Hoggart was acquitted by the petty jury.[272] Two men were charged with the murder of a new-born child in the later period surveyed, although both cases were dismissed at the assizes.[273] Thomas Hardman was charged with the murder of the male bastard child born to Martha Morton. Although three people gave statements to the coroner containing evidence that Morton had given birth to a child, neither Morton nor any baby could be found and while the absence of the child's body was not necessarily crucial to a successful prosecution, the absence of the mother to establish evidence of a pregnancy and birth led to the case against Hardman being dismissed.[274] The fact that members of the parish attempted to prosecute Hardman, when all the evidence was against them, indicates public

[270] Zedner, Lucia (1991) Women, Crime, and Custody in Victorian England, Oxford**:** Clarendon Press, p. 75.
[271] Hoffer and Hull, Murdering Mothers, pp. 154-156.
[272] TNA ASSI 41/3, Crown minutes, York, March 1939; TNA ASSI 44/53 (1738), recognizance were ordered for Margaret Risdale to prosecute John Hoggart for the murder of her new-born child.
[273] TNA ASSI 41/6, York county, March 1772.
[274] TNA ASSI 45/28/3/108B, depositions taken before Richard Linnecar, coroner, 28 February 1767; TNA ASSI 42/8; TNA ASSI 41/5, York county, March 1767.

concern over their potential liability for the support of a baby born in their parish to an unmarried mother.

Although five cases of infanticide identified from the coroner's reports in Yorkshire either failed to appear in the assize records or are marked 'discharged for want of prosecution', it is possible that the fact of an inquest and the threat of an indictment for infanticide was sufficient to embarrass some women so that they agreed to leave the parish.[275] In contrast, while the lack of responsibility demonstrated by men who fathered illegitimate children and who failed or were unable to marry the mother was strongly criticized during the eighteenth century, few men were indicted as accomplices (and even fewer as principle offenders) and the focus remained on unmarried mothers and the burden on the parish rate.[276]

Although the law extended a privileged status to married women that is not to say that married women did not kill unwanted children. Moreover, there were greater opportunities for a woman to conceal her actions if she were mistress of her own home or able to produce evidence of being prepared for a new baby such as the possession of clothes etc., from any previous babies born to her.[277] A married woman might also plead temporary insanity arising from the pregnancy and childbirth,[278] although, only in extreme cases did evidence of a married woman killing of a baby become public knowledge:

> On Thursday last a very melancholy Affair happen'd, at a little Town called Flaxton, within 5 miles of this city. A woman being big with child by her husband, who is greatly troubled with the palsy, ripped her womb open, which done she took

[275] Jackson, New-Born Child Murder, pp. 46-47.
[276] Jackson, New-Born Child Murder, p. 29.
[277] Schulte, The Village in Court, pp.107-108, in which Schulte identifies women who killed their new-born children as being those who were often already mothers.
[278] Rabin, Identity, Crime and Legal Responsibility, pp. 97, 103.

> out the child, and cut it in pieces. She committed the fact about 5 in the afternoon and lived until about 11 the next day. "Tis said she had taken poison the day before. She repented of the deed and would gladly have lived".[279]

The report highlights both the married status and social plight of the victims. The article serves to warn of the physical and mental dangers to any woman who might consider aborting a child and, by reporting on the regret she allegedly expressed, plays on the emotional impact on her had she survived the abortion. While any number of married women may have tried to abort foetuses or murder new-born infants, the law deemed them less likely to murder their own child than an unmarried woman, as evidenced by the relative absence of allegations against married mothers in the coroner's court and assize records surveyed.

Ann Nell was capitally convicted after she confessed to strangling her son Joseph, aged one year and three months. Her sentence was respited on the recommendation of the trial judge and commuted to transportation for fourteen years.[280] The favoured position of the married woman is illustrated by the outcome of enquiries into infant deaths at the Coroner's Court during the later period surveyed. In twelve enquiries into the deaths of 'infants' considered at the coroner's court between 1765 and 1769, eleven cases resulted in the finding of 'accident' or 'hand of God' and no individual was held culpable for a child's death, however young.[281] Hannah Crossland, a widowed mother, was accused of causing the death of her son David Crossland (described as an infant) by throwing him into a pond.[282] The case was transferred from the coroner's court to the assizes where Crossland was acquitted at her trial.[283] In practice, few mothers or other responsible adults were

[279] York Courant, Tuesday 8 June 1742, p. 3.
[280] TNA ASSI 44/55; TNA, ASSI 44/53,York county, March 1740; TNA SP 44/83 ff. 328-329.
[281] TNA ASSI 44/80-85.
[282] TNA ASSI 44/84,, report of coroner's inquest, 9 March 1769.
[283] TNA ASSI 41/6, assize minutes, York county, March 1769.

judged culpable for the death of very young children, even when a child died as a result of 'falling' into a well, stream, pit or the like while under their care.

Jackson and Sharpe assert that by beginning with an assumption of the guilt of the unmarried mother, many historians have failed to acknowledge the gendered bias of contemporary legal processes and medical practice.[284] Meg Arnot writes about the discourse amongst medical men in the second half of the nineteenth century on the "dichotomy between 'natural' motherhood and bad anti-mothers".[285] In contrast, the discourse amongst lawyers and the medical profession between the later part of the eighteenth century and the repeal of the Act in 1803 centred on the question of the presumption of guilt in cases of infanticide.[286] From the mid eighteenth century, men such as the jurist, Daines Barrington, and the surgeon, William Hunter, questioned why there should be a presumption of guilt when a woman concealed the birth of her child in order to protect her reputation.[287] Hunter further drew attention to the difficulties inherent in the birthing process and questioned the reliability of procedures such as the 'lung test'. So long as the statute of 1624 remained in place it represented a continuing link between illegitimacy and murder. At the same time, frequent acquittals legitimized by medical opinion satisfied humanitarian concerns and gave credence to the claims of the accused that they were guilty only of concealing their pregnancies.[288]

[284] Jackson, New-Born Child Murder, p. 12, referring to Sharpe, J.A. (1994) 'Women, witchcraft and the legal process', Kermode, J. and G. Walker (editors) , Women, Crime and the Courts In Early Modern England, London: UCL Press Limited, pp. 106-124, pp. 106-124.
[285] Arnot, 'Infant death, child care and the state', p. 280.
[286] 43 Geo. III, c.58 (1803) Act to prevent the murthering of Bastard Children (Amendment). The attempts to repeal the statute of 1624 are discussed in Jackson, New-Born Child Murder, pp. 159-177.
[287] Barrington, Daines (1766) Observations on the More Ancient Statutes, London., pp. 320-321; Hunter, William, M.D. (published posthumously, 1784) 'On the uncertainty of the signs of murder, in the case of bastard children', London: Filiquarian Publishing.
[288] Jackson, New-Born Child Murder, p. 104.

Conclusion (homicide)

The records surveyed for this chapter demonstrate the greater incidence of men accused of having committed general acts of homicide, whereas women were identified as the primary offenders in causing the death of new-born children. Indictments presented at the Yorkshire Assizes rarely defined the offence committed as manslaughter, instead evidence was generally put to the petty jury in terms of murder, leaving it open to the jury to find the accused 'not guilty of murder but guilty of manslaughter'. A partial verdict enabled an assize judge to exercise his discretion in sentencing those convicted of the lesser offence. Women were more frequently the beneficiaries of partial verdicts than men at the Yorkshire Assizes when charged with the homicide of another adult. For the lesser offence of manslaughter the standard sentence was branding, although by the later period surveyed, the greater majority of men and women convicted of manslaughter in Yorkshire were sentenced to be branded and serve a term in prison or the house of correction. Although statistically insignificant, it is nonetheless relevant to note that the only woman convicted of manslaughter was sentenced to a longer term of imprisonment than her male counterparts. That outcome is compatible with other comparative sentencing practices of men and women observed in this thesis, which indicate the harsher sentencing of women (and thereby the greater condemnation of women) once they had benefited from a partial verdict at their trial.

Assize judges were empowered to recommend a capital convict to the Secretary of State when they were deemed to be 'fit objects of mercy'. However, this was not something undertaken lightly: in the period 1765 to 1775, eleven men were convicted of murder but only two were recommended for a reprieve. James Brown's sentence was commuted to transportation for seven years after poisoning his wife, while John Scott was ordered to transportation (the period unknown) having poisoned his servant who was

pregnant by him. During the same period two other men were convicted of murder without reprieve, George Bulmer for the murder of his wife by strangulation and John Bolton for the murder of his pregnant servant by strangulation. The difference between the cases is that Brown and Scott used poison to murder their victims (a passive, feminine action) while Bulmer and Bolton used brute force to kill. It may have been the case that while Brown and Scott were condemned for their actions, they were not considered a general threat to society, although they were to be punished. In contrast, Bulmer and Bolton were violent men and while physical strength was admired in some quarters the deliberate use of that strength to kill a woman was not.

Because of the distinctions between petit treason and murder, women who murdered their spouse were more harshly treated than their male counterparts. There is no evidence of a petition for mercy being presented on behalf of either woman convicted of petit treason, which suggests that either the women had lost the support of their families and community, or they were aware that any appeal would be pointless and that their fate was sealed upon conviction. While few women were accused of petit treason, if convicted, the legal system provided for a cruel and public execution as a warning to others, although by this period an executioner would more commonly strangle a female convict before burning her body.[289] Neither case of petit treason identified for this thesis included deposition evidence that either wife had been previously the subject of excessive beating by her husband, which might, in other circumstances, have influenced the decision of the petty jury or provided grounds for a private petition for mercy.

[289] Beattie, Crime and the Courts, p. 79, n. 10; The Leeds Intellligencer, 3 May 1763, report on the execution of Mary Heald who was convicted at Chester Assizes of killing her husband with arsenic and sentenced to be strangled and her body burnt. Burning at the stake was abolished in 1790.

The cases examined for this thesis emphasise the evidential problems faced by an unmarried mother when pitted against the predisposition of parliament to assume her guilt and shift the burden onto the accused to prove her innocence. Nevertheless, the outcome of the majority of infanticide trials seem to fly in the face of the outcomes one might expect in a society and judicial system dominated by men, when evidential technicalities caused (or allowed) the vast majority of petty juries to acquit women accused of that offence. However, the incidence of infanticide should not be interpreted as representing the murderous nature of unmarried mothers, although they may indicate the lengths a single woman might go to in order to avoid the unnecessary discovery of a still birth, combined with the desire of parish officials to publicly condemn unmarried mothers as a warning to other young women.

Gendered rules of law applied to a woman convicted of killing her husband or accused of the murder of a new-born child and the sources surveyed for this thesis support the general view that most murders by women arose within a family or intimate context. However, the evidence examined in this chapter does not support the notion that "the law and the courts came down most harshly" on women who murdered their husband or child "when family values were threatened"[290], when women accused of infanticide were rarely convicted. In contrast, the common law dictated that a woman who killed her husband was guilty of a petit treason, as the offence 'violated the implicit contract between ruler and ruled', for which she could expect to be sentenced to burn at the stake, while a husband who murdered his wife was charged with murder and was liable to be hanged.[291] As an assize judge was unable to recommend a convict in treason for mercy, the absence of a

[290] Davis, Natalie Zemon and Arlette Farge Davis, (1993) 'Infractions, Transgressions, Rebellions', in Natalie Zemon and Arlette Farge (editors) (1993) Vol. III, A History of Women: Renaissance and Enlightenment Paradoxes, Cambridge, Massachusetts and London: Belknap Press of Harvard University Press, pp. 438-443, p. 442.
[291] McLynn, Crime and Punishment, p. 121.

petition for mercy in the few cases identified did not come about because of gendered decision-making on the part of the judiciary. There were mixed outcomes when men murdered their spouse or another woman and it appears that men were more greatly condemned at the Yorkshire Assizes for the excessive application of their physical strength than when they were found to have poisoned their victim.

Chapter 5. Non-fatal acts of violence: assault, rape and sodomy.

Keep we must, if keep we can, These foreign laws of God and man.[1]

Various studies of the organized gangs who committed robbery, assault, burglary and counterfeiting during the early modern period paint a picture of a violent and ungovernable society in the northern counties of England.[2] That image is inescapable when their observations are drawn from an examination of the records of the criminal courts. Nevertheless, it would be equally wrong to imagine the government of eighteenth-century Yorkshire as a vision of what Norma Landau describes as an "arcadian concept of judicial paternalism", exercised by rural magistrates.[3] This chapter examines judicial attitudes and responses to non-fatal acts of violence in Yorkshire, when all but the most serious assaults were classed as a misdemeanour. Although other historians point to a general decline in homicides and violence by 1700, evidence drawn from the record for Yorkshire demonstrates that allegations of assaults took up almost a quarter of the entire workload of a magistrate at quarter sessions.[4]

Defining an assault against the person

An assault was generally defined at common law as, "an attempt to offer, with force and violence, to do corporal hurt to another; as by striking at him with or without a weapon… or by holding up one's fist at him; or by any other such act, done in an angry,

[1] Houseman, A.E. (1859-1936) 'The Laws of God, The Laws of Man'.
[2] Brewer, J. and J. Styles (editors) (1980) An ungovernable people: the English and their law in the seventeenth and eighteenth centuries, London: Hutchinson; Morgan, Gwenda and Peter Rushton (1998) Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718-1820, Florence, KY, USA: Routledge.
[3] Landau, Norma (1984) The Justices of the Peace, 1679-1760, California, London: University of California Press, pp. 173-174.
[4] Spierenburg, Pieter (2008) A History of Murder: Personal Violence in Europe from the Middle Ages to the Present, Cambridge: Polity Press, p. 109; Shoemaker, Robert (2000) 'The decline of Public Insult in London: 1600-1800', Past and Present, vol. 169, pp. 97-131.

threatening manner".[5] An assault was both a trespass against the person (a civil offence) and an offence against a subject of the crown (a criminal misdemeanour) and the term 'assault' came to mean anything from a minor touching to a life-threatening attack. The common law offence of battery was a lesser offence, resulting from the infliction of unlawful force by one person upon another, and might involve only the 'least touching' of another person, including insolent behaviour, spitting and pushing.[6]

In the absence of a national police force and prosecution service, the 'reasonable' use of physical force was widely accepted as a legitimate way to settle personal disputes.[7] As a result, many incidents of physical abuse were either ignored or revenged privately so that acts of violence are under-reported in the court records. The authority of two magistrates to determine a range of petty offences while sitting in petty sessions included the power to imprison a servant for up to one year for an assault on his or her master; therefore, assaults of that nature were not recorded in the records of quarter sessions.[8] Inevitably, a number of complaints of assault would have been settled summarily within the community or by justices of the peace, while other complaints were determined under civil powers as a trespass to the person and, therefore, complaints determined by those means are absent from the criminal court records.[9] Two partial verdicts recorded in the quarter session records for Beverly concern one case where the accused was acquitted of an assault but

[5] Burn, Richard (1755) Justice of the Peace and Parish Officer, vol. 1, London, p. 75; and also Hawkins, William (1739, third edition, first published 1715) A treatise of the pleas of the Crown: or, a system of the principal matters relating to that subject, digested under their proper heads, vol. 1, London, pp. 133-134.
[6] Cole v Turner (1704/5) 6 Mod. Rep., 149 and 87 ER, 907 (Kohl, Uta, Trespass to the person, http://users.aber.ac.uk/uuk/tortstrespass1.html, accessed 29 August 2012); Burn, Justice of the Peace, London, vol. 1, p. 76; and also Hawkins, A treatise of the pleas of the Crown, vol. 1, pp. 133-134.
[7] King, Peter (2006, first edition) Crime and Law in England, 1750-1840: Remaking Justice from the Margins, Cambridge: Cambridge University Press, p. 227, n. 1.
[8] Dalton, Michael (1705) The country justice: containing the practice of the justices of the peace out of their sessions, London: William Rawlins and Samuel Roycroft, p. 23.
[9] King, Crime and Law in England, 1750-1840, pp. 230, 234; Morgan, Gwenda and Peter Rushton (2003) 'The magistrate, the community and the maintenance of an orderly society in eighteenth century England', Historical Research, vol. 76, London: Blackwell Publishing, pp. 54-77, p. 68; Morgan, Gwenda and Peter Rushton (eds) (2000) The Justicing Notebook (1750-64) of Edmund Tew, Rector of Boldon, Suffolk: The Surtees Society; Beattie, J.M. (2002, first published 1986) Crime and the Courts in England 1660-1800, Oxford: Oxford University Press, p. 124.

found guilty of rescuing livestock from the village pound (a trespass).[10] The second case concerns a man acquitted of assault but found guilty of battery.[11] Neither case is particularly unusual, but they provide evidence of the consideration of evidence by the petty jury and that they were able to distinguish between specific elements of an indictment before reaching a verdict.

Defining rape and sodomy

This chapter examines actions for assault, rape and sodomy brought in the criminal courts. The common link between assault and rape is that both offences involve the unlawful use of force against another person, and trial juries often gave partial verdicts of 'not guilty of rape' (or sodomy) but 'guilty of assault'. Rape was defined as "the unlawful carnal knowledge of a woman by force and against her will" and was a capital felony, without benefit of clergy.[12] Any act of intercourse with a girl under the age of 10 years was deemed unlawful without the need to prove the absence of consent and was a felony, without benefit of clergy.[13] A sexual act committed by one man on another man (or with an animal) was defined as 'sodomy' and it too was a capital felony punishable at common law without the benefit of clergy.[14] While consensual sexual intercourse between an unmarried man and an adult woman was largely ignored in legal terms, it was the lack of consent by the woman that turned a lawful act into an unlawful one. The evidential problems that have

[10] ERY Beverley, QSF/130/B/6, QSV/2/9, Michaelmas 1740. The village pound or pinfold was an enclosure in which livestock could be detained, either as a penalty for straying and causing damage, or as an indemnity against debt or default.
[11] ERY Beverley, QSF/139/B/3, Christmas 1741.
[12] 18 Eliz. I, c.7 (1576), An Act to take away Clergy from offenders in Rape and Burglary; 3 Wm. & M., c.9, (1691), continued to allow those who were accused of being accessories to rape to claim the benefit of clergy. Historically, rape had been classified as a felony punishable by death but the laws of William I changed the punishment to castration; 3 Edw. I, c.13 (1275), Act to prevent the ravishment of women reclassified rape as a misdemeanour; 13 Edw. I, c.34 (1285), Statute of Westminster reinstated rape as a felony punishable by death; East, A Treatise of the Pleas of the Crown, vol. 1, London: J Butterworth, pp. 434-436.
[13] Hale, Sir Matthew (1736, first published 1680) *Historia placitorum coronae*: The History of the Pleas of the Crown, vol. 1, London, p. 630; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Public Wrongs, vol. 4, Oxford: Clarendon Press, p. 212.
[14] Hawkins, A treatise of the Pleas of the Crown, vol. 1, p. 6; 25 Hen. VIII , c.6 (1533) Buggery Act, made male homosexuality a capital offence (female homosexuality was not specified), reinstated by 5 Eliz. I, c.17 (1562) Vice of Buggery Act. The death penalty was removed from the offence by 24 & 25 Vict., c.100, s. 61, (1861) Offences against the Person Act.

existed since the time the offence of rape was acknowledged have been summed up by Catherine MacKinnon: "rape is a sex crime that is not a crime when it looks like sex".[15] In contrast, there was no requirement to prove that the act of sodomy was non-consensual as it was an offence in its own right, irrespective of the age of the parties.

The prosecution of non-fatal assaults

Table 5.1: Allocation of assaults (excluding rape and sodomy) between the assize and quarter sessions, Yorkshire, 1735-1775. [16]

Assault	Q.S.		Assizes	
	No.	**%**	**No.**	**%**
	1624		**113**	
M	1373	**84.5**	104	**92.0**
F	251	**15.5**	9	**8.0**
		100		100

As misdemeanours, the majority of reported assaults were referred to the quarter sessions and relatively few to the assizes (Table 5.1), which may reflect a general attempt to discourage the prosecution of minor offences at the assizes. It is generally agreed that women committed fewer of the more serious act of violence than men, which is borne out by both the quarter session and assize records for Yorkshire.[17] Due to a tendency for assaults of a more serious nature to be referred to the assizes, it is no surprise to find that men made up a higher percentage of defendants than women in the higher court, so that men accounted for 92.0 per cent of all indictments for assault in the higher court. The

[15] MacKinnon, Catherine A. (Summer, 1983) 'Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence,' Signs vol. 8, No. 4, pp. 635-58, p. 649.
[16] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[17] King, Crime and Law in England, 1750-1840, p. 196; Morgan and Rushton, Rogues, Thieves, p. 97.

relative absence of women indicted for an assault at the Yorkshire Assizes mirrors surveys of early seventeenth century Sussex and Cheshire.[18]

There is no comparable gendered study of prosecutions for general assaults in eighteenth-century England and Wales, although Anne-Marie Kilday has ventured into this area in her study of women and violent crime in lowland Scotland, 1750-1815[19] and Walker's gendered study of non-lethal violence in Cheshire (1590-1640) provides useful comparisons in the language of violence and judicial responses.[20] Other studies which have observed the relative absence of women from participation in interpersonal violence tend to focus on domestic violence and/or other periods in time. Jim Sharpe's study of seventeenth-century Essex calculates the level of female assailants at about 8 per cent of the total number of defendants indicted for assault;[21] whereas Beattie places female participation in eighteenth-century Surrey at 19 per cent of the total cases of assault and wounding.[22] King's more recent publication includes a chapter on 'punishing assault', in which he considers the patterns of outcomes in assault cases at the quarter session for Essex between 1748 and 1821.[23] King's analysis reflected Sharpe's conclusions which point to a consistent level of female participation in assaults at 8 per cent of all offenders indicted for assault, whereas the quarter session records for Yorkshire put female participation at about 15 per cent, which more closely accords with Beattie's analysis.[24]

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[18] Capp, Bernard (2003) When Gossips Meet: Women, Family and Neighbourhood in Early Modern England**,** Oxford: Oxford University Press, p.218, n. 148; Walker, Garthine (2003) Crime, Gender and Social Order in Early Modern England, Cambridge: Cambridge University Press, p. 33.

[19] Kilday, Anne-Marie (2007) Women and Violent Crime in Enlightenment Scotland, Suffolk: The Boydell Press for The Royal Historical Society, p.82: Kilday's study of lowland Scotland, 1750-1815, identified indictments for assault by women in 37 per cent of the identified cases, from which she concluded that Scottish women were more predisposed to violence than their English counterparts. However, as the treatment of violence and pre-trial procedures were different in the Scottish system it is possible that more cases of assault proceeded to prosecution in Scotland than in England;

[20] Walker, Crime, Gender and Social Order, chapters 2 and 3.

[21] Sharpe, J.A. (1983) Crime in seventeenth-century England: a county study, Cambridge: Cambridge University Press, p. 117.

[22] Beattie, J.M. (Summer, 1975) 'The criminality of women in eighteenth-century England' Journal of Social History, vol. 8 (4), pp. 80-116, p. 85.

[23] King, Crime and Law in England, 1750-1840, pp. 227-254.

[24] King, Crime and Law in England, 1750-1840, p. 237.

Clearly, there is scope for further research in this area to identify regional variations before any attempt can be made to understand and explain those differences.[25] The aspects of assaults selected for attention in this chapter include a gendered analysis of general interpersonal assaults, domestic violence (including *charivari*); women as the victims of rape; child victims of violence; and sodomy between men.

It is difficult to assess the actual level of violence used in any individual case because deposition statements from the quarter sessions for Yorkshire have not been located and, as Walker observed for Cheshire, the wording of indictments is formulaic and determined by legal conventions.[26] There are usually few distinguishing features in quarter session indictments for 'simple' assaults, save for names, dates and locations. When Nathaniel Townend was indicted for an assault on two men, William Richardson and Joseph Atkinson, the record states that "with force and arms … did severally make an assault and … severally beat, wound and evilly beat [them]', so that their lives were 'despaired of' ".[27] The same words were then used to describe an assault by Richardson and Atkinson upon Townend arising out of the same incident. As the three men were each involved in the giving and receiving of blows, it seems highly improbable that they were all injured to the extent described in the indictment and they were all acquitted at their trials. The case of Townend illustrates the danger of relying on the words used in an indictment as reflecting the true nature of an assault and injuries sustained. Nevertheless, a sufficient body of material has survived recording the verdicts and sentences passed to permit an examination of the prosecution process in that court. In contrast, while the assize records are few in number, there is a good body of deposition statements still extant that add colour and detail to the wider picture.

[25] The sample periods used by King for his analysis of assaults cross the period post 1780, when sentencing practices changed, which may explain some of the discrepancies between these two studies.
[26] Walker, Crime, Gender and Social Order, p. 25.
[27] WRY QS4/37 93-100, quarter sessions Leeds, October 1770.

Conviction rates (assault)

Table 5.2: Verdicts, assaults by men (excluding rape and sodomy) – petty jury, Yorkshire, 1735-1775. [28]

	Q.S.		Assize	
	No.	**%**	**No.**	**%**
Total	**702**		**72**	
Discharged for want of prosecution	11	**1.6**	3	**4.2**
Guilty	576	**82.1**	37	**51.4**
Partial verdict	2	**0.3**	2	**2.8**
Not guilty	60	**8.5**	16	**22.2**
Keep the peace	11	**1.6**	13	**18.1**
Traverse	29	**4.1**	1	**1.4**
Referred to K.B.	10	**1.4**	0	**0.0**
Sent to Assizes	3	**0.4**	0	**0.0**
		100.0		100.0

Table 5.3: Verdicts, assaults by women– petty jury, Yorkshire, 1735-1775. [29]

	Q.S.		Assizes	
	No.	**%**	**No.**	**%**
Total	**141**		**5**	
Discharged for want of prosecution	1	**0.7**	2	**40.0**
Guilty	121	**85.8**	3	**60.0**
Partial verdict	0	**0.0**	0	**0.0**
Not guilty	15	**10.6**	0	**0.0**
Keep the peace	2	**1.4**	0	**0.0**
Traverse	2	**1.4**	0	**0.0**
Referred to K.B.	0	**0.0**	0	**0.0**
Sent to Assizes	0	**0.0**	0	**0.0**
		100.0		100.0

[28] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[29] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.

Justices of the peace were not bound to commit defendants accused of misdemeanours to gaol pending trial, which meant that there was limited scope for prosecutors to take advantage of the committal process as a means of 'punishing' the accused. The recorded instances of complaints for an assault being dismissed for want of prosecution are very low, and 1.6 of men and 0.7 per cent of women charged with a non-fatal assault at quarter sessions, rising to 4.2 per cent of men and 40.0 per cent of women similarly charged at the assizes (Tables 5.2 and 5.3 below). There are many reasons considered earlier in this thesis why prosecutors failed to appear on the day set for trial, but victims of assault were particularly vulnerable to continuing threats from an assailant released by the justices pending his or her trial and it is possible that fear of revenge (rather than clemency) may have deterred some complainants from proceeding with their prosecution

82.1 per cent of men appearing before a petty jury accused of an assault at quarter sessions received guilty verdicts, compared with 51.4 per cent of men facing similar charges at the assizes (Table 5.2). At the same time, while far fewer women than men were accused of assault, the conviction rate of women was higher than that of their male counterparts when 85.8 per cent of women accused of an assault at quarter sessions received guilty verdicts, falling to 60.0 per cent at the assizes (Table 5.3), although numerically this represents only three women. These figures do, however, provide some evidence of that there was comparatively less sympathy for a woman who exhibited aggressive or 'unfeminine' behaviour, while the relative absence of women from the records of assize for simple assault demonstrates the general absence of women from the more serious incidents of non-fatal violence. That either implies that women committed fewer and less serious violent offences than men and/or a more lenient approach by those concerned in the indictment of female offenders than their male counterparts.

Walker took issue with Bernard Capp's view, that men generally paid little heed to female violence because they would have caused only superficial injuries,[30] as being "somewhat anachronistic". [31] Women may indeed have committed more serious acts of assaults than is at first apparent from the data presented in Table 5.2 and 5.3, where they had entered a traverse at an earlier stage of proceedings[32] and had since stood trial on an indictment for a lesser charge or on the basis of the original offence alleged. In addition, the relative absence of women bound to keep the peace is likely to reflect issues raised earlier on the ability to bind a woman without male sureties, rather than the timidity of women.[33]

King observed that women indicted for assault at quarter sessions in Essex obtained a higher proportion of not guilty verdicts than men; that they were less likely to be imprisoned; and that the gender of the victim made little impact on sentencing, although, he added the *caveat* that the sample used was too small to conclude with any certainty that assaults by females were treated more leniently.[34] One might, however, expect women to be treated more harshly when they transgressed social and sexual norms and it appears from the quarter session records for Yorkshire that an intolerance of women who displayed violent traits, so that there was a higher conviction rate for women charged with an assault.

Sentencing (assault)

In contrast to felonies, it was possible for any misdemeanour, including an assault, to be settled by a private agreement which might include the payment of compensation. When Mary Brook was charged with an assault upon Elizabeth Dearman, Brook 'submitted' to the court and agreed to 'talk to the prosecutor', presumably in order that she could reach a

[30] Capp, When Gossips Meet, p.218.
[31] Walker, Crime, Gender and Social Order, pp. 77-78.
[32] See glossary.
[33] See pp. 67-68, 75.
[34] King, Crime and Law in England, 1750-1840, p. 237.

private settlement by way of compensation, following which she would have been released from the court and the indictment discharged.[35] Blackstone expressed concern about the possibility of abuse of process in matters of assault when, in his opinion, too many actions in assault were brought for private gain:

> It is not uncommon, when a person is convicted of a misdemeanor, which principally and more immediately affects some individual, as a battery ... , for the court to permit the defendant to *speak with the prosecutor*, before any judgement is pronounced; and if the prosecutor declares himself satisfied, to inflict but a trivial punishment. This is done to re-imburse the prosecutor his expenses, and make him some private amends, without the trouble and circuity of a civil action. But it surely is a dangerous practice ... prosecutions for assaults are by these means too frequently commenced rather for private lucre than for the great ends of public justice.[36]

Not all judges necessarily shared Blackstone's concerns and some were willing to aid the prosecution case by postponing hearings while settlements were negotiated, during which time a defendant might be remanded in custody if he or she were unable to find recognizances for their appearance at a later hearing. For example, Elizabeth Bruce and Thomas Richardson were jointly indicted for an assault on a man when attempting to rescue livestock. They were ordered to remain in gaol until the next assize, unless they were able to provide their own recognizances in the sum of £50, plus two sureties each of £25.[37] The case was discharged when the victim reported to the court that he had 'received satisfaction'. In those circumstances, the threat of imprisonment was sufficient to force the defendants to reach a compromise with the complainant.

[35] WRY Rotherham, QS4/30 157, July 1745.
[36] Blackstone, Commentaries, vol. 4, pp. 356-357.
[37] TNA E 389/244 f. 473, Assizes, York county, March 1769.

Interpreting the incidence of violence and contemporary responses to male and female violence is a matter of debate. Walker's observations on the demand for a response to an attack on a man's honour in seventeenth-century Cheshire[38] are mirrored in publications throughout the eighteenth century which associated any failure by a man to defend his honour with cowardice: "Men, who bear Affronts with Patience, are so generally despised … because … their Forbearance does not proceed from a Motive of Religion, but a Principle of Cowardice".[39] While men's physical bravery or propensity towards violence was understood, it is likely that what counted as honourable for a man was deemed dishonourable for a woman who was expected to remain passive.[40] Nevertheless, Walker, questioned the passivity of women in practice and argued that the "interpretative model of men's violence as 'normal' and women's as numerically and thus culturally insignificant is inadequate".[41]

The evidence in Yorkshire is that the vast majority of men and women convicted of an assault in that county were punished by way of a fine, while a few men received additional orders to be whipped, serve a short term in gaol or provide sureties for their good behaviour on release (Tables 5.4 and 5.5). Standard fines of about 1s. each were imposed in the courts of Yorkshire, irrespective of the gender of the defendants, which reflected both the private and civil nature of the offence and mirrors sentencing practices found in other parts of the country.[42] As court officials were not required to keep records of private settlements it is possible that many more incidents of assault were resolved out of court than are apparent from the court records. Therefore, cases recorded in the court records may be skewed in the direction of the more serious incidents that demanded public censure

[38] Walker, Crime, Gender and Social Order, p. 33.
[39] Mandeville, Bernard (1732) An Enquiry into the Origins of Honour and the Usefulness of Christianity in War, London, p. 79.
[40] Spierenburg, A History of Murder, pp. 5-6.
[41] Walker, Crime, Gender and Social Order, p. 75.
[42] King, Crime and Law in England, 1750-1840, pp. 232, 235; Beattie, Crime and the Courts, p. 459.

and/or offences committed by men and women of inadequate financial means to offer compensation.

Table 5.4: Sentencing men for assault (excluding rape and sodomy), Yorkshire, 1735-1775. [43]

	Q.S.		Assizes	
Total	**No.**	**%**	**No.**	**%**
	585		**48**	
Death Penalty	0	**0.0**	1	**2.1**
Fine only	542	**92.6**	32	**66.7**
Fine and gaol	14	**2.4**	2	**4.2**
Fine and whipping	2	**0.3**	0	**0.0**
Fines and sureties for good behaviour	9	**1.5**	0	**0.0**
Gaol/ house of correction	4	**0.7**	2	**4.2**
Keep the peace	11	**1.9**	11	**22.9**
Gaol/ house of correction and sureties	1	**0.2**	0	**0.0**
Whipped	1	**0.2**	0	**0.0**
Enlist	1	**0.2**	0	**0.0**
		100.0		100.0

The distinctions between interpersonal violence and crimes against property are evident in court practices which allowed a defendant, who put the prosecutor on notice that he or she would plead guilty to an indictment for a minor assault, to call witnesses in mitigation before the level of fine was declared.[44] The possibility of mitigating the level of a fine was significant because the inability to pay a fine made the prisoner a debtor of the court and debtors were customarily detained in gaol until the debt was paid. In 1740, Robert Thompson and Robert Thompson junior were convicted of an assault on a constable and committed to York Castle, one until sureties could be found for his good behaviour and the other until a fine of £5 was paid.[45] Thompson junior served eighteen

[43] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[44] Stubbs, W., G. Talmash (1749, second edition) The Crown Circuit Companion, London: J. Worrall, p. 54.
[45] NRY Guisborough, QSM/104 158, 164, July 1739 and April 1740; NRY QS vol. 8,Thirske, October 1740.

months in gaol before he was able to satisfy the court debt, without any reduction in the fine for time served.

Table 5.5: Sentencing women for assault, Yorkshire, 1735-1775. [46]

	Q.S.		Assizes	
Total	**No.**	**%**	**No.**	**%**
	114		**3**	
Fine only	108	**94.7**	2	**66.7**
Fine and gaol	0	**0.0**	0	**0.0**
Fine and whipping	0	**0.0**	0	**0.0**
Fines and sureties for good behaviour	0	**0.0**	0	**0.0**
Gaol/ house of correction	2	**1.8**	1	**33.3**
Keep the peace	1	**0.9**	0	**0.0**
Gaol/ house of correction and sureties	3	**2.6**	0	**0.0**
Whipped	1	**0.9**	0	
Enlist	0	**0.0**	0	**0.0**
		100.0		100.0

At a time when the majority of fines for an assault ranged from a few pence to one or two shillings, the higher fines imposed are of particular interest as evidence of the severity of an assault, the status of the victim and/or the means of the assailant.[47] As Blackstone observed, "what is ruin to one man's fortune, may be matter of indifference to another's",[48] therefore, the discretion of the sentencing justices was qualified by a statutory requirement under the bill of rights, "that excessive fines ought not to be imposed".[49] Few men during either period were fined £5 or more for an assault and, therefore, it is relevant to consider what circumstances made some assaults more exceptional than others. For example, a number of men were fined for an assault on a public official in the execution of his duties,

[46] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[47] Blackstone, Commentaries, vol. 4, p. 371.
[48] Blackstone, Commentaries, vol. 4, p. 371.
[49] Blackstone, Commentaries, vol. 4, p. 371; 1 Wm & M., sess. ii, c.2 (1688) Bill of Rights provided that: 'excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted'.

such as Robert Thompson who was fined £5 for an assault on a constable.[50] When Thomas Marshall, a blacksmith, assaulted Elizabeth Tottingham the original allegation of rape was reduced to an assault after Marshall was successful in pleading his traverse. Following his conviction, Marshall was fined £10 and committed to York Castle until it was paid.[51] While Marshall avoided a trial and possible conviction for a capital offence, the higher level of the fine imposed points to the court's concern with the true nature of the assault.

At the higher end of the social scale, William Collings, a gentleman, was fined £50 in 1744 for an assault on Matthew Chitty St Quinton, esquire.[52] In those circumstances, and as Walker observed in seventeenth-century Cheshire, the rights and wrongs of violence were measured in terms of hierarchy, therefore, a fine was likely to be weighted to reflect both the status of the victim and the financial means of the assailant.[53] When Collings was unable (or unwilling) to pay the fine an order was made that his property be *estreated* to cover the debt.[54] The level of a fine may indicate the seriousness of the assault when particular aspects served to aggravate what was an otherwise common offence, such as an assault on a constable in the execution of his duty, a sexual assault on a woman, or an assault on a senior member of the community.

At the same time, a gentleman might be punished more severely for his own 'ungentlemanly' behaviour so that the level of a fine reflected the means of the assailant and in order to punish a man of means, the fine had to be considerably higher than for a poorer man or woman. In one exceptional case, John Tranmore, was sentenced to death in 1775 for an assault on another man by shooting (the occupation or status of neither man is known). His sentence was reprieved and, following a favourable report from Judge

[50] NRY Guisborough, QSM/104 158, 164, July 1739 and April 1740; NRY QS vol. 8,Thirske, October 1740.
[51] WRY Skipton, QS4/30 25-33, July 1743.
[52] ERY Beverley, QSV/2/9, Michaelmas 1744.
[53] Walker, Crime, Gender and Social Order, p. 40.
[54] See glossary. ERY Beverley, QSV/2/9, Michaelmas 1744.

Ashurst, a free pardon was awarded.[55] Capital sentences rarely followed an indictment for an assault but it is possible that Tranmore had been involved in a duel. Duelling relates back to the defence of honour and was something more often practiced by the social elite, for whom monetary compensation was insufficient recompense for an affront to their honour.[56] If death resulted from a duel it constituted murder at common law, although Blackstone recognised it "requires such a degree of passive valour, to combat the dread of even undeserved contempt, arising from the false notions of honour".[57] Kiernan found that between 1760 and 1820, of 172 reported duels, ninety-one had fatal results, of which eighteen went to trial and only two resulted in a capital conviction.[58]

The hierarchical nature of eighteenth-century society allowed all manner of violence between men to be justified, particularly when it concerned responses to affronts by men of a lower class. As 'lord and master' in his own home, the law extended a man power over his wife, child and servant to exercise 'reasonable chastisement' which, as demonstrated in the preceding chapter, might even excuse a violent assault which led to the death of a dependant.[59] Until the middle of the nineteenth century, divorce was extremely rare, very expensive and unattainable for the majority of women unless they could establish that they had suffered 'life threatening' cruelty as a result of physical abuse.[60] Women were

[55] TNA ASSI 42/9; TNA ASSI 41/6, Kingston upon Hull July 1775; TNA SP 44/91/418, 421.

[56] McLynn, F. (1989) Crime and Punishment in eighteenth-century England, London and New York: Routledge, pp. 141-147; Andrew, Donna T. (October, 1980) 'The code of honour and its critics: The opposition to duelling in England, 1700-1850', Social History, 5 (3), pp. 409-434, p. 419; Banks, Dr. Stephen (2010) A polite exchange of bullets: the duel and the English gentleman 1750-1850, Woodbridge: Boydell, p. 20. See also, Boswell, James (editor) (1904, reprinted 1965) Boswell's Life Johnson, London: Oxford University Press, p. 484, entry for 10 April, 1772.

[57] Blackstone, Commentaries, vol. 4, p. 199. The common law rules against libel in English law developed during the nineteenth century in the court of the Queen's Bench as an alternative to duelling, to allow gentlemen to defend their reputations without resorting to violence.

[58] Kiernan, V. G. (1988) The Duel in European History: Honour and the Reign of Aristocracy, Oxford: Oxford University Press, p. 102. Banks reported similar failures to convict those who caused death as the result of a duel in the courts between 1785 and 1845, Banks, A polite exchange of bullets, p. 137.

[59] See pp. 179-180.

[60] Stone, Lawrence (1993) Broken Lives: Separation and divorce in England, 1660-1857, Oxford: Oxford University Press, p. 10. TNA Research Guides: Divorce before 1858, http://www.nationalarchives.gov.uk/records/research-guides/divorce-before-1858.htm, accessed 12 July

otherwise expected to suffer a very high level of physical abuse before their situation might be considered untenable; therefore, it is not surprising to find few cases of assaults alleged against a husband by his wife in the periods surveyed. As Walker observed, "the point at which 'reasonable correction' merged into outrageous violence is unclear".[61]

The quarter sessions records for Yorkshire between 1735 and 1745 reveal only five cases in which a husband was accused of an assault upon his wife. They resulted in the conviction of two men, one of which was fined 1d. and whipped and the other fined 1s; and one man ordered to keep the peace towards his wife.[62] During the period 1765-1775, three cases identified concerning an assault by a man on his wife were discharged for want of prosecution, and the failure of abused women (and men) to give evidence against their partners continues to be a matter of concern for the courts.[63] Likewise, only three cases of non-fatal domestic abuse have been identified from the assize records during the two eleven year periods surveyed. Furthermore, while a few violent men in Yorkshire were ordered to 'keep the peace' towards their wives, very few of them were separately convicted of an assault during the periods surveyed. James Barber was fined 1s. in 1740 for an assault on his wife and widowed mother-in-law and ordered to find sureties for his good behaviour because of his history of "frequently cursing, abusing, assaulting, beating and grievously threatening both women".[64] In 1765, John Winn was accused of an assault on his wife, for which he was ordered to remain in gaol until he found sureties for his good behaviour towards his wife.[65] Both orders suggest concern for the future protection of their

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2012. It was not until 1790 that judges begin to reinterpret 'cruelty' as 'a reasonable apprehension of future bodily harm.'

[61] Walker, Crime, Gender and Social Order, p. 63.

[62] ERY Beverley, QSF/129/A, 6 August 1740, justices ordered Philip Egerton to enter into a recognizance of £40 in respect of an order that he keep the peace towards his wife.

[63] One in three domestic violence cases failed in 2009/10 because the victim either failed to attend court or retracted her evidence, Stamer, Keir, QC, DPP (speech given 12 April 2011) 'Domestic Violence: the facts, the issues, the future', http://www.cps.gov.uk/news/articles/domestic_violence_-_the_facts_the_issues_the_future/, accessed 22 July 2012.

[64] TNA ASSI 41/3, Crown Minutes, York; TNA ASSI 44/55, York county, March 1740.

[65] TNA York County March 1765, E 389/243 f.603.

wives, rather than punishing the offender. In a different domestic setting, Elizabeth Dickinson was the victim of an assault by her son for which he was found guilty and ordered to remain in gaol until the next assizes, by which time he was expected to find sureties for an order that he keep the peace.[66] The sentence removed the source of the problem for six months, after which time two members of the community were bound to supervise any delinquent behaviour which broke 'social norms'. These orders also demonstrate contrasting attitudes towards a husband's right to 'chastise' his wife and social expectations that a son should treat his mother with respect which Walker also observed in seventeenth-century Cheshire.[67] The outcomes in Yorkshire generally reflect Walker's observations on the preceding century, where marital disputes lay outside the remit of the authorities when male violence to wives, servants and children could be justified in terms of "upholding order".[68]

It is not known what level of behaviour forced the husband of Diana Foster to make public the fact that he had lost control of his wife, to the extent that he sought an order that she keep the peace towards him.[69] That case was unusual at a time when men, who were dishonoured by the behaviour of their wives, might expect to be mocked by their neighbours by displays of *charivari*. While, for example, horns might figure in displays against men who had been cuckolded, a man who defended his honour was expected to act like a ram in nature, by fighting other men and controlling his female dependants.[70] Women's violence was, however, more commonly associated with the domestic realm and men's with the public and, as such, women's violence was less likely to be the concern of public authorities. As a result, lower sentencing patterns for women may be mistaken as trivialising the offence when it ought, perhaps, to be seen as recognising the private nature

[66] TNA ASSI 45/22/1/35; TNA ASSI 44/58, York county, July 1741.
[67] Walker, Crime, Gender and Social Order, pp. 66-67.
[68] Walker, Crime, Gender and Social Order, p. 64.
[69] ERY Beverley, QSF/246/C/8, Christmas 1769, recognizance of Henry Markham of Wressle.
[70] Spierenburg, A History of Murder, p. 109; Shoemaker, 'The decline of Public Insult', p. 6.

of their offending. Nevertheless, when female violence moved into the public sphere attitudes and sentencing might change.

During the period 1735-1745, no woman received a fine of particular note for an assault; the highest fine was reserved for Ann Marsh who was ordered to pay a fine of 10s. for wounding Judith Earle with a knife.[71] The use of a weapon escalated the seriousness of an assault and attracted higher sentences because it removed the element of a fight between equals and tended to aggravate the seriousness of any injuries inflicted.[72] The lower level of the fine imposed on Marsh, than awarded against some men, does not necessarily mean that because the incident concerned a female on female assault it reduced the seriousness with which the offence was viewed but it may reflect the social and financial status of the parties, as it would with male on male assaults. In contrast, Elizabeth Booth, an innkeeper, was fined £5 at the quarter sessions for an assault upon another woman 'with swords and staves and knives'.[73] As there are no other records of complaints against Booth, it is likely that the fine reflected not only the use of a bladed weapon, but also parish concerns about men and women who ran unruly establishments, and her ability to pay.

As the archival records for the East Riding show, keeping an alehouse was a common occupation for a woman.[74] Across quarter sessions for the riding generally about 40.0 per cent of complaints (thirty two of eighty-one) for keeping a disorderly house concerned female proprietors. When Elizabeth Irwin, a married woman, was accused of keeping a disorderly house used for drinking, tippling and whores, she entered a traverse to the bill

[71] TNA NRY York City, QS 1731-39 191-199, May 1739.
[72] 1 Jac. I, c.1, s.8 (1603) An Act to take away the Benefit of Clergy from some kind of Manslaughter, withheld the benefit of clergy from any person convicted of manslaughter as the result of inflicting a knife wound; Hawkins, A treatise of the Pleas of the Crown, vol. 1, p. 77.
[73] WRY Doncaster, AB5/2/46, 1760.
[74] ERY, QDT/2/3/1, 1745, List of persons licensed to sell ale for Bainton and Hunsley Beacon Divisions: the list includes fifty-two licences in Bainton, of which eleven (21.6 per cent) were issued to women, while in neighbouring Hunsley, of seventy-eight licences , twelve (15.4 per cent) were to female publicans.

which was rejected. Following her conviction she was ordered to stand in the pillory.[75] It is also likely that her licence to run the alehouse would have been withdrawn as a civil measure exercised by the justices of the peace. She (and her husband) were prepared to go to the expense of instructing lawyers to challenge the claim not only to prevent her from the shame of the pillory but, more so, to protect their business.

The line between domestic and public domains becomes blurred when men or women took children, who were dependant on parish relief, into their homes as 'apprentices'. Though once under the roof of a new master, a parish child was as much under his 'control' and 'correction' as his wife and children.[76] In 1771, husband and wife, John and Hannah Walker were jointly convicted of a prolonged and vicious assault upon a thirteen year old Elizabeth Owens who lived and worked in their home as a domestic servant. Nothing is known of the girl's background but at a time when poor children of a parish might be apprenticed out or placed in domestic service they became vulnerable to both physical and sexual abuse. John Walker submitted to the court probably because, as Walker similarly observed, men rarely denied that they had beaten their wives, children or servants, it being an acceptable response to domestic disorder.[77] Sarah Fielding's book of cautionary tales for young women published in 1749 includes a story of a woman seen beating her eight year old daughter, so that her cries could be heard some distance away. When she was asked to stop beating the child, she responded "[I] never strike her but for Lying … I am resolved to break her of this horrid custom". To which the on-looker "could not but approve of what the poor Woman said".[78] Although Hannah Walker pleaded not

[75] ERY, Hull C CQA/2/5 3-4, January 1767, Elizabeth Irwin was found guilty of keeping a disorderly house and sentenced to the pillory.
[76] Walker, Crime, Gender and Social Order, p. 64.
[77] Walker, Crime, Gender and Social Order, p. 64.
[78] Fielding, Sarah (1744) The Governess; or The Little Female Academy, calculated for the entertainment and instruction of young ladies in their education, London: A. Millar, p. 48.

guilty, she was convicted and the husband and wife were each ordered to serve a term of two months in gaol and to remain there until their separate fines of £3 were paid.[79]

When John and Hannah Walker's behaviour exceeded accepted limits in the exercise of authority over another person, the court made no distinction in the sentencing of husband and wife. The sentences imposed were not particularly severe which may reflect the lower social status of the victim, although it is not known if anyone acting on the girl's behalf pressed for additional compensation. There are few other complaints against men and women acting together in an assault but those that have been identified do not indicate a significant difference in the sentencing. For example, Elizabeth and Thomas Joy (not her husband) were ordered to serve three months in gaol following their convictions for an assault on a man, while Thomas Joy was additionally ordered to pay a fine of one mark.[80] Without knowing the social status and financial means of the individual parties it is not possible to make categorical statements as to gendered leniency.

Rape and sodomy

Table 5.6: All non-fatal assaults by men, Yorkshire, 1735-1775. [81]

	Q.S.		**Assizes**	
	No.	**%**	**No.**	**%**
Total allegations	**1383**		**138**	
Assault	1373	**99.3**	104	**75.4**
Assault with intent to rape	6	**0.4**	12	**8.7**
Rape	3	**0.2**	15	**10.9**
Attempted sodomy	1	**0.1**	2	**1.4**
Sodomy	0	**0.0**	5	**3.6**
		100.0		100.0

[79] WRY Rotherham, QS4/37 182-191, August 1771.
[80] TNA ASSI 41/3, Crown minutes, York; TNA ASSI 44/52, York County, July 1737.
[81] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.

By the nature of the offences, rape and sodomy were offences committed only by men, although women might be accomplices. During the eighteenth century there was much legal debate as to what act constituted a rape and the evidence required to prove it. A number of judges were of the opinion that some penetration of the woman was necessary, although legal opinion was divided on the relevance of an emission by the man.[82] When full coition was prevented, a charge for the attempted rape was possible.[83] The number of sexual offences referred to the assizes in either period was numerically very low (Table 5.6) and the successful prosecution of rape was not helped by the opinions of contemporary medical examiners, such as Samuel Farr, who doubted the circumstances in which some rapes occurred and questioned the determination of the 'victim' to sufficiently prevent sexual intercourse taking place:

> But the consummation of a rape, by which is meant a compleat, full, and entire coition, which is made without any consent or permission of the woman, seems to be impossible, unless some very extraordinary circumstances occur: for a woman always possesses sufficient power, by drawing back her limbs, and by the force of her hands, to prevent the insertion of the penis into her body, whilst she can keep her resolution entire.[84]

Walker reported similar language in seventeenth-century Cheshire, when male penetration was associated with female consent.[85] Therefore, when female agency was eroded in the face of male violence, the law interpreted female passivity in a sexual encounter as evidence of consent, when in other circumstances society and the church counselled female passivity as evidence of feminine virtues.[86] A woman was further hampered in a successful

[82] East, A treatise of the Pleas of the Crown, vol. 1, pp. 437-438.
[83] Farr, Samuel (1788) Elements of medical jurisprudence, or, A succinct and compendious description of such tokens in the human body as are requisite to determine the judgment of a coroner, and of courts of law, in cases of divorce, rape, murder, &c. : To which are added, directions for preserving the public health, Printed for T. Becket, pp. 41-42.
[84] Farr, Elements of medical jurisprudence, pp. 41-42.
[85] Walker, Crime, Gender and Social Order, p. 56.
[86] Walker, Crime, Gender and Social Order, p. 50.

prosecution for rape if she was found to have become pregnant as a result of the encounter because contemporary medical opinion was that pregnancy could only come about following a pleasurable experience.

> With respect to the next question, whether a woman, upon whom a rape has been committed, can become pregnant? It may be necessary to enquire how far her lust was excited, or if she experienced any enjoyment…. So that if an absolute rape were to be perpetrated, it is not likely she would become pregnant.[87]

Even as late as 1825, books on medical jurisprudence had to acknowledge that, "we do not know, nor shall probably ever know, what is necessary to cause conception" and, in those circumstances, pregnancy provided proof of acquiescence by the woman.[88] Therefore, a single woman who became pregnant would have been unable to allege rape yet, if she hid her pregnancy and the baby died during an unassisted birth, she risked a capital charge for infanticide.[89] Evidence of rape was very much focused on the relationship between the victim and the accused, any existing relationship between them provided grounds for the jury to question the denial of consent. A husband would never be accused of rape since a man could not 'rape' his wife; many female domestic servants were exposed to some form of sexual abuse within the household, though few would have the courage to accuse a master or his son of rape;[90] and rape between a man and woman of similar age and background would also be difficult to prove.

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[87] Farr, Elements of medical jurisprudence, pp. 42-43.
[88] Beck, Theodric Romeyn (1825) Elements of medical jurisprudence, London: Printed for John Anderson and others, p. 70. Beck did question the evidence to support the argument that a victim of rape could not become pregnant, but Farr's opinion was not at that time wholly rejected.
[89] See pp. 188-189.
[90] Lindemann, Barbara S. (Autumn, 1984) 'To Ravish and Carnally Know: Rape in Eighteenth-Century Massachusetts', Signs, vol. 10 (1), pp. 63-82, p. 79, 81; Malcolmson, R.W. (1977) 'Infanticide in the Eighteenth Century' in Cockburn, J.S. (ed.) Crime in England 1550-1800, London: Methuen & Co Ltd, pp. 187-209, p. 202.

There was also some confusion during the eighteenth century as to whether a partial verdict was possible in cases of rape.[91] Therefore, some men were charged with rape, others with 'assault with intent to rape' and some men were indicted on two separate charges of rape and an assault; thus dispensing with the need for a partial verdict. Beattie similarly observed that unless a jury was able to convict a man for the full offence of rape, they rarely took the opportunity to give a partial verdict.[92] Correspondingly, no indictments for rape in Yorkshire during the periods surveyed resulted in a conviction for the full offence, only those cases in which the accused was indicted on separate counts of rape and assault allowed a jury to find the defendant guilty of the lesser crime.[93]

A victim of rape might expect to be examined by a midwife, a jury of matrons or a male surgeon in order to verify the loss of her virginity or confirm evidence of any injuries inflicted.[94] Unreasonably, allegations of rape (as a felony) required at least two witnesses or one witness and some other strong evidence.[95] The 'other' evidence required highlights the patriarchal nature of the law of rape when greater weight could be attached to the testimony of a woman with a good reputation and who searched for the offender or provided evidence that the perpetrator fled.[96] In contrast, a strong presumption existed against the testimony of a woman 'of evil fame', if she had no witnesses, if she concealed the rape for any length of time, or if she did not cry out for help.[97] The capital nature of the offence frequently led to indictments for a lesser offence and demonstrates an anti-female bias in the rules of law. There were, therefore, a host of disincentives for a woman to

[91] Edelstein Laurie (October 1998) 'An Accusation Easily to be Made? Rape and Malicious Prosecution in Eighteenth-Century England' The American Journal of Legal History, vol. 42, No. 4, pp. 351-390, p. 360.
[92] Beattie, Crime and the Courts, p. 130 and p. 411, Table 8.3.
[93] Clark, Anna (1987) Women's Silence, Men's Violence :Sexual assault in England 1770-1845, London and New York: Pandora, p. 47, in which Clark also noted the low number of reported incidents of rape and even lower conviction rates.
[94] See p. 42. Sharpe, J.A. (1994) 'Women, witchcraft and the legal process', Kermode, J. and G. Walker (editors) , Women, Crime and the Courts In Early Modern England, London: UCL Press Limited, pp. 106-124, p. 112.
[95] East, A treatise of the Pleas of the Crown, vol. 1, p. 439.
[96] Blackstone, Commentaries, vol. 4, pp. 213-214.
[97] Blackstone, Commentaries, vol. 4, pp. 213-214.

pursue a prosecution in rape, which goes to explain Rushton and Morgan's observations that many complaints brought before justices of the peace in the North-East of England alluding to allegations of sexual assault were settled without formal recourse to the courts.[98]

As demonstrated in Table 5.6, only eighteen claims for rape were referred to the quarter sessions and assizes during the two eleven year periods surveyed. These figures are not dissimilar to Beattie's report of an average of one case every eighteen months in Surrey, although he reported finding only one every four years in Sussex.[99] Rape was a capital offence and any bill making out that offence should have been presented at the assizes, which was more consistently the case in Yorkshire during the later period surveyed. Of two complaints for the full offence of rape referred to the quarter sessions, 1735-1745, one complaint was rejected by the grand jury and the other referred to the King's Bench, possibly on a question of the jurisdiction of the lower court. Attempts short of the full sexual offence remained within the jurisdiction of the lower court as an assault upon the person. Of the two complaints of an assault with intent to ravish presented to quarter sessions, 1735 and 1745, the outcome of one case is not recorded and it is possible that the complaint was settled by the payment of compensation to the victim. The second complaint was determined in 1744 and resulted in a partial verdict of not guilty of attempted rape but guilty of an assault. In those circumstances the sentencing justices were able to mark the seriousness of the underlying crime and imposed a fine of 50s., which was much higher than the usual 1s. fine for other simple assaults.[100] However, because fines

[98] Morgan and Rushton, 'The magistrate, the community', pp. 68-69; Morgan and Rushton, The Justicing Notebook, p. 15
[99] Beattie, Crime and the Courts, p. 126.
[100] WRY Leeds, QS QL/1/6, June 1744.

were commonly set at three times the prosecutor's costs before 1755, it is possible that the victim in that case had gone to the lengths of obtaining legal representation.[101]

At quarter sessions for 1765-1775, four bills for attempted rape failed to proceed to prosecution, even though recognizances had been issued for the attendance of witnesses. Three of the female victims were described as 'the wife of …', and one woman as 'the daughter of …' and it is possible that the husbands and father of the victims took on the role of prosecutors and settled the cases privately in exchange for financial compensation which in all probability would have been paid to them as representatives of the victims. A fifth man, Daniel Farrah, was indicted separately for rape and an assault on the same woman. Farrah entered his traverse to the indictments and when the case returned to court he was found guilty only of the assault.[102]

Attitudes of juries and judges at the assizes in Yorkshire were not significantly different from those demonstrated in the lower court. Of six allegations of an assault with intent to rape referred to the earlier assizes, three cases were dismissed for want of prosecution and one case rejected by the grand jury. Two indictments for an attempted rape resulted in guilty verdicts for which Edward Taylor was fined 1s., while Daniel Macane was fined 1s., sentenced to serve a term of one year in gaol and find sureties for his good behaviour for two years upon his release. Taylor was accused of making a forced entry into a house and making a violent assault on a married woman, with intent to rape her. Taylor confessed only to the attempted rape, it being a lesser crime than a forced entry into property.[103] If the confession to the lesser charge came about following a private agreement between the husband (who abandoned his claim against the assault on his property) and the

[101] See p. 118; 6&7 Wm. III, c.20 s. 6 (1694/5) An Act for the King's most gracious general and free pardon; Oldham, James (Spring, 1994) 'Truth-Telling in the Eighteenth-Century English Courtroom', Law and History Review, vol. 12 (1), pp. 95-121, p. 111.
[102] WRY Leeds, QL/1/9 199, October 1770.
[103] TNA ASSI 44/55, York county Mar 1740.

defendant (who offered compensation for the assault upon his wife), it also enabled the victim and defendant to avoid being subjected to the public humiliation of giving evidence in court. In those circumstances the apparent acceptance of a confession to a lesser charge without question would not be unexpected.

In contrast to Talyor's case, Macane was accused the attempted rape of an unmarried woman, Grace Daniel, who prosecuted her own claim. In her deposition statement taken before a magistrate and the legal clerk, Grace asserted that she had refused Macane's advances (indicating her moral standing) and that he "filled her mouth with sand" (to explain why she was unable to call for help). As evidence of the injuries suffered explained that Macane threw her to the ground and gave her several blows with his hand, finally, she stated that she struggled away from him and immediately told someone else what had occurred.[104] That statement compiled by the legal clerk contained every element required to satisfy a conviction for the full offence, save for the act of actual penetration. It is of course possible that Grace Daniel and other women in similar circumstances were raped but the absence of an independent witness (or an awareness of a reluctance by petty juries to convict for a capital offence) may have resulted in a tactical decision to prosecute for, and obtain a conviction, for the lesser crime.

Of five indictments for the full offence of rape presented to the earlier assizes surveyed, three claims were dismissed for want of prosecution, one defendant acquitted by the petty jury and a fifth case failed when the defendant left the county so that he could not be traced and his accomplice could not be tried in the absence of the principle offender.[105] Convictions were just as difficult to secure at the later assizes when of the six cases of

[104] TNA ASSI 45/21/3/99-101; TNA ASSI 41/3, Crown minutes, York, August 1739; York Courant, 29 July and 14 August 1739; Leeds Mercury, 29 July 1740.
[105] TNA ASSI 45/22/4/95-98A; TNA ASSI 41/3, Crown minutes, York, July 1744.

attempted rape, one case was dismissed for want of prosecution, two men were acquitted of the charges by a petty jury and one man convicted of only a simple assault and fined 1s. Two other men convicted of a joint assault with intent to rape the same woman were also fined 1s each. Although nine indictments for the full offence of rape were put to trial during the later assizes surveyed for Yorkshire, nevertheless, the outcome was that seven men were acquitted by a petty jury and the outcome of other two cases is unknown, possibly because of some other private arrangement. While many cases may have been settled privately, ten out of fifteen cases (two-thirds) alleging a sexual offence at the later assizes ended in the dismissal of the bill or acquittal of the accused. Those cases provide evidence of the continuing difficulties in establishing sufficient evidence to support an allegation for the full offence of rape, when pitted against concerns by petty jurors, who were clearly reluctant to convict a man for the offence when it attracted a capital sentence.

The rape of a child

Three cases in the later sample period raised particular issues relating to a sexual assault on a child. Two cases concerned the rape of a child under the age of ten and another an assault with intent to ravish an 'under age' girl, although none of the claims resulted in the conviction of the accused man. Joseph Kay was accused of the rape of ten year old Sarah Meakin who lived in his house as a 'poor apprentice'. It was alleged that Kay had on several occasions over a period of six weeks, "carnally known and abused" her.[106] Sarah reported the events to her mistress, Kay's wife, who contrived a situation which allowed Sarah to go home on the following weekend in order to report the rape to her mother. Details such as this suggests that Kay's wife believed her version of events and that she created a situation which allowed the child to get help from her mother, without confronting her husband directly. Once the matter was reported to a magistrate, Sarah was

[106] TNA ASSI 45/28/2/86-88; TNA ASSI 44/81.

examined by two surgeons, Messrs Brown and Wood, who reported that, "upon complaint of Sarah Meakin against her master Joseph Kay, for ravishment, upon her examination we found the external part of the vagina much inflamed, and she had much pain and soreness which we apprehend was occasioned by some violence offer'd to her".[107] Despite convincing medical evidence in support of the child's allegations, no record of a prosecution of the claim has been located. In those circumstances, it is possible that Kay reached an out of court settlement with the child's family, who would have benefited from any compensation offered.

Similar possibilities are likely to account for the failure of John Wilson and John Eagle to prosecute Abraham Kirkman for an assault with intent to ravish the 'under age' Lettice Wilson.[108] Although Wilson and Eagle entered in recognizances to prosecute Kirkman, enquiries undertaken by the court revealed that the child was no longer residing in the county.[109] In neither case is it known what private arrangements, if any, were entered into to avoid the need to put the child through the ordeal of a trial and save the defendants from public humiliation. Reaching a private settlement with a man who raped a child may also have been encouraged by justices, attorneys and counsel as the law relating to the rape of girls aged between 10 and 12 years was unclear. The general opinion was that if a female child was over the age of 10 years it was necessary to prove that the act took place against her will. If a girl of that intermediate age was deemed to have given consent, then the rape was classed as a misdemeanour rather than a felonious rape.[110]

[107] TNA ASSI 45/28/2/88; TNA ASSI 44/81.
[108] TNA ASSI 45//73, York County, March 1766.
[109] TNA ASSI 45/28/2/89-95.
[110] East, A treatise of the Pleas of the Crown, vol. 1, p. 436; Simpson, Anthony E (Spring, 1986) 'The 'Blackmail Myth' and the Prosecution of Rape and Its Attempt in 18th Century London: The Creation of a Legal Tradition', The Journal of Criminal Law and Criminology, vol. 77, No. 1, pp. 101-150, p. 105, in which Smith draws attention to a belief held by some men that they could be cured of venereal disease by having sexual intercourse with a virgin and therefore sought out young girls who would be sexually inexperienced.

No reference to one case concerning a particular child victim of rape has been found in the TNA ASSI series, probably because the papers were removed from the local court following an appeal to the House of Lords, although, reference to it has been found in a nineteenth century work on medical jurisprudence.[111] In 1773 a man by the name of Brazier was convicted at York Assizes of the rape of a seven-year old girl, who had given evidence but was not sworn. On appeal from that conviction, twelve law lords argued that a child might be sworn if she possessed "sufficient knowledge of the nature and consequences of an oath".[112] Until that judgement the evidence of infants of 'tender years' (under seven) had been deemed inadmissible whether they understood the oath or not.[113] Two years following that decision, the trial and acquittal of Captain Kenny Powell for the alleged rape of six year old Margaret Edson made headline news in the broadsides of 1775.[114] The trial included legal debate on the credibility of the evidence of a six year old child and whether or not that evidence could be taken on oath.[115] In accordance with the earlier judgement in Brazier's case, the trial judge tested Margaret's understanding of truth, lies and the devil before allowing her to give evidence. Nevertheless, Powell was acquitted when Edson was let down by the evidence of the two medical examiners. Even though they reported that her "private parts were a good deal inflamed which must have been occasioned by some violence being done to her", neither of them were able to give any explanation as to how those injuries came about and had to be pushed by the prosecutor to even acknowledge that the injuries suffered by the child could have been caused in the

[111] Beck, Elements of medical jurisprudence, p. 97.
[112] Beck, Elements of medical jurisprudence, p. 97. See also, Jackson, Louise A. (1999) 'The child's word in court: cases of sexual abuse in London, 1870-1914' in Margaret L. Arnot, and Cornelie Usborne (editors) Gender & Crime in Modern Europe, London: UCL Press, pp. 223-224, n. 12.
[113] Blackstone, Commentaries, vol. 4, pp. 214-215.
[114] Williamson, W. (c.1775) The Trials at Large of the felons in the Castle of York, York, pp. 17-22.
[115] Williamson, The Trials at Large of the felons, pp. 17-22, at pp.18-19, concerning the decision in the case of R v. Traverse (1726) that a child under the age of seven years could not give evidence on oath against a defendant charged with the rape of that child. The reasoning applied for the admission of evidence from six year old Margaret Eden was that, if the court was prepared to hear the second hand evidence of the parent, then it should also hear the first hand evidence of the child

manner she described.[116] Although Powell admitted that he had put his hand under the child's petticoat and commented on what a "fine flat lass she was", the doubts expressed by the medical examiners as to the cause of her injuries meant that an acquittal was inevitable.

In a second attempt to convict Powell, he was remanded in gaol until the next assizes pending his trial on a charge for an assault on the child, presumably arising out of the same circumstances. While no conviction for the second indictment has been located in the assize records for 1776, it is possible that some other arrangement was reached between Powell and Edson's family. The graphic details of the alleged incident reported in the broadside highlights the level of public humiliation that could be inflicted on both parties by the failure to reach an out of court settlement, irrespective of the guilt or innocence of either party. Nonetheless, while the reluctance of the examining surgeons provides evidence of patriarchal attitudes that protected men accused of rape and, possibly, the extent of Kenny's influence in the community; other men with influence were prepared to pursue the complaint against him and indict him for the lesser offence, perhaps forcing him to reach a compromise with the child's parents.

Sodomy

Due to the seriousness of the full offences of rape or sodomy, the majority of complaints were referred to the assizes where the evidential requirements for each offence were fairly similar. However, in contrast to other capital offences created during the seventeenth and eighteenth centuries, "the detestable and abominable vices of sodomy and buggery" were excluded from the King's mercy. Therefore, a rejected bill or partial

[116] TNA ASSI 45/32/1 ff. 203-206 (1775), depositions in the case of Kenny Powell; Williamson, The Trials at Large of the felons, p. 21.

verdict, if not an acquittal, was crucial to a man accused of one or other of those crimes.[117] An indictment for sodomy had to include evidence of penetration and that an emission had occurred, in addition to which there had to be other evidence to support the allegation.[118] One complaint of an attempt to commit buggery was referred to quarter sessions at Doncaster in 1742, but the bill was rejected by the grand jury.[119] No other bills for the full offence or an attempt were referred to quarter sessions in Yorkshire during the periods surveyed.

Records for the earlier assizes surveyed include one complaint for buggery with a horse, that was dismissed by the grand jury,[120] and another for buggery with a sow, that went to trial but the defendant acquitted; while two indictments for sodomy were dismissed for want of prosecution.[121] George Haggerty observed different responses to sodomy, depending on the social class of the accused, so that, an upper class "libertine" might be "publicly celebrated", a middle-class gentleman find himself "in trouble" but "usually acquitted", while a man from the lower classes might be executed.[122] The cases identified in Yorkshire appear to fall within the middle bracket and, indeed, resulted in the dismissal of the charges or acquittal of the men concerned. Edward Wilkinson the younger was probably between the ages of 10 and 14 when he and his uncle were jointly accused of sodomy.[123] In addition to the boy's deposition evidence stating that sexual acts had

[117] 3 Geo I c.29, s. (1716) An Act for the Kings most Gracious, General and Free Pardon; 7 Jac. I, c.24, s.6 (1609/1610) An Act for the king's most general and free Pardon; 12 Ca. II, c.11, s.10 (1660) An Act of Free and General Pardon Indemnity and Oblivion; 25 Ca. II, c.5, s.7 (1672) An Act for the Kings Majestyes most Gracious, General and Free Pardon.; 2 Wm. &M. c.10, s.7 (1689) An Act for the king and Queens most Gracious General and Free Pardon; 6&7 Wm. &M. c.20, s.8 (1694) Act for the King's most gracious general and free pardon; 7 Ann c.22, s.19 (1708) An Act for the Queens most gracious general and free Pardon; Bailey, Derrick Sherwin (1955) Homosexuality and the Western Christian Tradition, London: Archon Books, p. 150.
[118] Hawkins, A treatise of the Pleas of the Crown, vol. 1, p. 6.
[119] WRY Doncaster, QS4/29 218-221, 10 February 1742.
[120] TNA ASSI 44/52, 53, York county July 1737, recognizances of £200 each were taken for the defendant's appearance in court, plus one surety, although no action taken in two consecutive sessions.
[121] TNA ASSI 41/3, Crown minutes, York, July 1744.
[122] Haggerty, George E. (1999) Men In Love: Masculinity and Sexuality in the Eighteenth Century, New York, Chichester, West Sussex: Columbia University Press, p. 5.
[123] TNA ASSI 45/22/2/160-162A.

occurred between him and his uncle on more than one occasion, there were supporting statements by a lodger and employee of the uncle who lived in the same house. The uncle was committed to gaol until the following assizes while his nephew was committed to the house of correction in the absence of anyone able to provide sureties for his appearance in court. However, the bill was dismissed by the grand jury and both uncle and nephew were discharged from the court.[124] The failure of anyone to stand surety for the nephew is interesting, when he is described as "the son of Gabriel Wilkinson of the City of York, jeweller".[125] Presumably the boy's father would have been abler to offer sureties for his son, had he so wished, but given the nature of the offences he may have wished to distance himself from both his son and brother. It is also possible that one or other of the uncle or father was able to influence their peers in the city of York who sat on the grand jury that rejected the indictment.

During the later assizes surveyed one complaint for buggery with a horse did not proceed to prosecution. In contrast to the earlier assizes, two indictments for an assault with intent to commit buggery were couched in terms of an attempt, rather than a capital offence, which possibly explains why convictions were secured against both men. In 1772, Joseph Ellenthorpe, a vicar in the West Riding of Yorkshire, was convicted at York Assizes on a charge of assault with intent to commit buggery, even though the evidence of the depositions was that the full offence was carried out.[126] He was sentenced to two years in prison, fined £20 and ordered to find two sureties for £25 each before his release. David Mirsey, a butler, was similarly indicted on four counts of assault with intent to commit buggery on boys of about sixteen years of age. Mirsey confessed to all charges and was fined 6s. 8d. on each charge, ordered to a term of six months in gaol for each offence and

[124] TNA ASSI 42/6, City of York, March 1742.
[125] TNA ASSI 45/22/2/161A.
[126] TNA ASSI 45/30/2 ff. 55-58; TNA ASSI 41/6; TNA ASSI 42/8, York county, March and August 1772; TNA E 389/245 f. 170, 461; E 389/245 f. 330, 462.

to remain in gaol until the fines were paid.[127] The boys' statements all reported similar acts of masturbation and oral sex but none alleged an act of penetration which was necessary for an indictment for the full offence. The sentences imposed suggest that the circuit judges were more censorious of the behaviour of a priest, his abuse of his status in the community and the possibility that the full offence had been carried out. Nevertheless, the two convictions for attempted sodomy are less likely to provide evidence of the changing attitudes towards that particular crime, than evidence that juries in Yorkshire were reluctant to convict for the capital offence of sodomy (and equally rape). David Nash similarly observed a general reluctance to use the full sanctions of the Buggery Act in cases of private homosexual activities so that, as with other areas of the 'Bloody Code', a capital sentence was rarely used.[128] Victims of sodomy and rape were likely to be more confidant of securing a conviction on an indictment for an attempt which provided them with the means of obtaining compensation, combined with the satisfaction of the conviction and punishment of the accused.

Attitudes within the judicial system to rape have been described as "crushingly indifferent"[129] which mirrors attitudes witnessed within the legal system generally, when legislation was geared to the protection of rights to property, which increasingly attracted a capital sentence, while a violent assault, rape or manslaughter might be punished by a very small fine (allowances for compensation accepted). Nevertheless, the apparent indifference to rape is surprising when rape might be seen in terms of an assault upon a man's property, honour, patriarchy and masculinity.[130] However, perceptions of rape as an 'emendable'

[127] TNA ASSI 45/32/1/154-160; TNA ASSI 42/9, York County March 1775; TNA E 389/245 f. 602, 603.
[128] Nash, David (2010) 'Moral Crimes and Law in Britain', Kilday, Anne-Marie, David S. Nash (2010) Histories of Crime: Britain 1600-2000, Basingstoke: Palgrave Macmillan, pp. 17-38, p. 24; 25 Hen. VIII, c.6 (1533).
[129] Gillis, John R. (1985) For better, for worse: British marriages, 1600 to the present, New York, Oxford: Oxford University Press, p. 130.
[130] Boswell, James (editor) (1897) The Life of Samuel Johnson, LL.D, to which is added the Journal of a tour to the Hebrides, p. 593, from a letter written Tuesday 14 September 1773; Stone, Lawrence (1977) The

crime (that is, one which could be resolved by the payment of compensation) dates back to medieval times.[131] It is therefore possible, once sufficient time had elapsed to ensure that a woman had not become pregnant as a result of the rape, that her family may have been more willing to settle the matter by the payment of monetary compensation.

Allegations of rape do not appear to have attracted the general support of people in Yorkshire to exercise 'local justice' through the rough music and *charivari,* which has been observed in other areas of the country for shaming sexual offenders in the community; although, Anna Clark's research led her to find one example in the North Riding of Yorkshire, where a man 'known' to have abused a girl was often publicly humiliated.[132] While the sexual innocence of a young victim might attract support, the same support may not have been forthcoming to an older woman who was expected to defend her virtue more vigorously.[133] Besides, women were seen as fabricators of the truth and jurists such as Blackstone and Hale tended to comment on the rights of the wrongly accused man, rather than those of the victim.

> 'It is true … that rape is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered, that it is an accusation easily to be made, hard to be proved, but harder to be defended by the party accused, though innocent'.[134]

Family, Sex and Marriage in England, 1500-1800, London: Weidenfeld and Nicholson, p. 637; Gillis, For better, for worse, p. 130; Perez-Molina, Isabel (2001) Honour and Disgrace: Women and the Law in Early Modern Catalonia, USA: Dissertation.com, p. 166; Hill, Bridget (1984) Eighteenth Century Women: An Anthology, London: George Allen & Unwin (publishers) Ltd, pp. 25-26.

[131] Stevenson, Kim (2010) ' 'Most Intimate Violations': Contextualising the Crime of Rape', Kilday, Anne-Marie, David S. Nash (2010) Histories of Crime: Britain 1600-2000, Basingstoke: Palgrave Macmillan, pp. 80-99, p. 82.

[132] Clark, Women's Silence, p. 50, n. 13. On *charivari* and sexual offenders, see Underdown David (1985) Revel, Riot and Rebellion: Popular Politics and Culture in England, 1603-1660, Oxford: Oxford University Press, pp. 100-103.

[133] Farr, Elements of medical jurisprudence, pp. 41-42; see p. 223.

[134] Blackstone, Commentaries, vol. 4, p. 215; Hale, Mattthew (1736) The History of the Pleas of the Crown, vol. 1, ch. 58, pp. 635-36.

Contemporary historians also draw attention to the possibility that some allegations of rape were brought in a malicious attack by a 'wronged' woman. Hay suggested that the very nature of the private prosecution put the female victim in a powerful position in deciding whether or not to prosecute her assailant, and allowed some women to lay false and malicious charges.[135] Lawrence Stone and Laurie Edelstein suggest that some pregnant unmarried women brought rape charges rather than file a civil claim for a breach of promise to marry, in order to explain a state of pregnancy to their families or employers.[136] While wealthy men were more likely to have 'settled' a dispute before going to court, Anthony Simpson questioned any theories that malicious prosecutions were characteristic of rape cases, most particularly for the reason that (if such theories were correct) one would expect to find a far higher incidence of rape cases in the court records. [137] The prospect of reaching an out of court settlement and/or prosecution for a lesser offence must have been tempting to both parties, while the anti-female basis of the law made it all the more attractive for those women who wished to avoid giving detailed evidence of the sexual encounter in a public arena.[138]

Conclusion (non-fatal assaults)

The vast majority of non-fatal assaults referred to the judicial process were simple assaults, falling within the category of misdemeanours, determined in the lower court and punished by way of a small fine. The level of assaults referred to the quarter sessions for Yorkshire represent about 25 per cent of the case load of the lower court, although the greater proportion of such complaints were made against men. About 37 per cent of all bills for an assault were rejected by grand juries in Yorkshire during the periods surveyed,

[135] Hay, D. (1989) 'Prosecution and Power: Malicious Prosecution in the English Courts, 1750-1850', in Hay, D. and F. Snyder (eds), Policing and Prosecution in Britain 1750-1850, Oxford: Clarendon Press, pp. 343-395, pp. 377-378.
[136] Stone, Lawrence (1990) Road to Divorce: England 1530-1987, Oxford: Oxford University Press, pp. 25, 87-95; Edelstein, 'An Accusation Easily to be Made?', pp. 376-389.
[137] Simpson, 'The 'Blackmail Myth', pp. 115.
[138] Beattie, Crime and the Courts, pp. 128-129.

although it is not possible to calculate what percentage of those may have been the result of malicious or frivolous prosecutions. However, victims of all manner of assaults were able, possibly even encouraged, to arrive at a private settlement by way of compensation which led to a number of cases being abandoned or punished by a small fine that belied the severity of some incidents.

Both sexes were generally punished for an assault by way of a fine, while a few men were additionally ordered to be whipped, serve a short term in gaol or provide sureties for their good behaviour. However, interpreting evidence of assaults is complicated by the formulaic terminology used in indictments and when private arrangements for compensation allowed the court to mark a conviction by only the smallest fine. At the same time, higher fines are more likely to provide evidence of an individual's personal circumstances and/or social status of the victim than the severity of the injury inflicted. Therefore, the fact that men in Yorkshire were more frequently punished by fines of a higher level than women, does not necessarily provide evidence of the triviality of female violence but may be explained by the process of imposing fines relative to the ability to pay, combined with the fact that female offending, including assaults, was more commonly associated with the domestic environment and, as such, was less likely to be of concern to the public authorities. In exceptional circumstances, when female violence moved into the public arena they were the beneficiaries of higher fines, as seen in Yorkshire in relation to women who used weapons and/or were concerned in incidents relating to their role as alehouse keepers. Even so, the relative absence of women from the assize records for Yorkshire is indicative of the general absence of women from the most serious incidents of assault.

The patriarchal nature of the law meant that few claims of domestic violence appear in the court records, at a time when society recognised a husband's right to chastise his wife, children and servants. The same attitudes are reflected in the infrequent use of orders to keep the peace to punish a husband whose behaviour exceeded the bounds of acceptable behaviour, while other men might respond to affronts to their honour by physical responses relative to their social status. Even when the rape of a man's wife or daughter might be interpreted as an attack on his honour or against his 'property', the number of rapes prosecuted at the assizes was very low. The reluctance of some examining surgeons to confirm evidence of child abuse provides evidence of the patriarchal attitudes that protected men, particularly those of some status in the community. Nonetheless, recourse to private settlements avoided the public humiliation of the women and children abused, while allowing a victim's father to protect the future marriage prospects of his daughter and a husband to minimise the level of public 'shame' that reflected on him.

The low incidence of prosecutions for the full offence rape or sodomy in the Yorkshire records highlights the evidential difficulties women and men faced in bringing a successful prosecution and leads to the inevitable conclusion that women and men either failed to prosecute these offences or alleged an attempt or ordinary assault, rather than go through the ordeal of medical and judicial examinations. That jurors found alleged defendants guilty only of an attempt or simple assault, provides other evidence of the reluctance of jurors to convict for the capital offence and discomfort with the admission of behaviour that contradicted contemporary notions of masculinity.[139] From a modern perspective, the law in the eighteenth century was very partial and many apparently guilty people escaped criminal convictions for their crimes. The severity of the law in defining rape and sodomy

[139] Blackstone, Commentaries, vol. 4, pp. 215-216, in which Blackstone describe sodomy as "an infamous offence against nature" which is "a crime not fit to be named"; Lindemann, 'To Ravish and Carnally Know', p. 76.

as capital offences often appears to have benefited the defendant rather than offering justice to the victim of rape when, for instance, the death penalty meant that rapists were often only charged or convicted of a lesser offence.[140] The evidence from Yorkshire is that jurors were unable to convict for rape or sodomy, together with a robust attitude by the judiciary on the enforcement of the rules of evidence which were very much biased against the credibility of the female victim of rape.

Few other gendered surveys of the incidence of indictments for assault contrast the work of both quarter session and assize records archives and place their findings within the context of the eighteenth century. Therefore, for example, further research into subjects such as bills of complaint and traversed indictments may reveal evidence of accusations of more serious assaults committed by either gender than are at first apparent. The subject of gendered, non-fatal violence would benefit from comparative studies of other regions in order to better understand female participation in interpersonal violence, which goes beyond the environment of domestic violence, both in relation to the eighteenth century and in contrast to other time periods.

[140] Beattie, Crime and the Courts, p. 129.

Chapter 6: Theft in eighteenth-century Yorkshire

People finding their properties not secure under the government
… could never be safe not at rest, nor think themselves in civil society.[1]

When John Ellis was indicted for domestic burglary and theft, he was acquitted on the charge of burglary, convicted of theft and sentenced to transportation for seven years. His co-defendant and mother, Isabel Ellis, was convicted of receiving stolen goods and ordered to transportation for fourteen years.[2] The sentences that followed reflect the statutory rules relating to the offences committed, rather than providing evidence of gendered attitudes of the petty jury or trial judge, because the Transportation Act of 1718 provided that a person convicted of buying or receiving any stolen goods should be transported for fourteen years and the benefit of clergy allowed a fist time convict for a grand larceny to be transported for seven years.[3]

Gendered studies on theft

At the opening of the eighteenth century the system of criminal justice operating in England and Wales had not fully adapted to the needs of an urban and commercial society where crime against property was perceived to have become more prevalent. Studies of participation in theft and items stolen reveal gendered differences in the types of offences committed and different gendered responses to those who stole during different periods. Walker's study of theft in seventeenth century Cheshire led her to observe that men and women displayed different patterns of criminal activity in the types of goods they stole and their choice of partners in crime. She found evidence that women were active in female networks and that there were distinct differences in the types of moveable property stolen

[1] Locke, J. (1980 first published 1690) Second Treatise of Government, Indianapolis, Cambridge: Hackett Publishing Company Inc, p. 51.
[2] TNA ASSI 45/22/1/45-52A, depositions and recognizances in the matter of Isabel and John Ellis; TNA ASSI 42/6, York county Aug 1741.
[3] 4 Geo. I, c.11 (1718) An Act for the further Preventing Robbery, Burglary and other Felonies and for the more effectual Transportation of Felons.

by either sex, reflecting the economic and social roles of each sex within their community.[4] In a later study using similar sources, Walker went on to observe that women were likely to be more severely treated by the courts than their male counterparts.[5] They were not, as is supposed by some, the general recipients of judicial clemency. However, transportation replaced branding as the statutory punishment for those who successfully pleaded benefit of clergy after 1718 and, therefore, different issues were relevant to sentencing during the period examined by Walker from those pertaining to the periods considered in this thesis.[6]

In contrast, Mackay's survey of Old Bailey records for the late eighteenth century led her to suggest that women who stole were twice as likely to be acquitted or have their sentence reduced as were men who pleaded distress or asked for mercy.[7] Palk's study of shoplifting, pick-pocketing and coining during the late eighteenth and early nineteenth centuries led her to observe that gender was at the centre of the decision-making process and that many of those decisions were both surprising and contradictory.[8] While she observed that women were not always the recipients of lenient judgements, she did identify gender as being relevant in the enforcement of a capital sentence. She also observed (as Mackay did) that when it came to sentencing women more often received a custodial sentence while their male counterparts were more often sentenced to transportation (to Australia) for seven years.[9] Palk found that a capital sentence was more commonly applied to young men from the clutch of unemployed, indigent poor who were of concern to the middling class of jurors, while the 'type' of women capitally sentenced were more often

[4] Walker, Garthine (1994) 'Women, theft and the world of stolen goods', in Kermode, J. and G. Walker (editors), Women, Crime and the Courts In Early Modern England, London: UCL Press Limited, pp. 81- 105, p. 88, Table 4.3.
[5] Walker, Garthine (2003) Crime, Gender and Social Order in Early Modern England, Cambridge: Cambridge University Press, p. 178.
[6] See p. 31; 4 Geo. I, c.11 (1718).
[7] MacKay, Lynn (Spring, 1999) 'Why They Stole: Women in the Old Bailey, 1779-1789', Journal of Social History, vol. 32, No. 3, pp. 623-639, p. 627.
[8] Palk, Deidre (2006) Gender, Crime and Judicial Discretion, 1780-1830, Suffolk: The Boydell Press, pp. 13-14.
[9] Palk, Gender, Crime and Judicial Discretion, pp. 65-66.

described in terms of their loose morals, drunkenness and generally troublesome behaviour.[10] However, Mackay and Palk's studies were based on reports from London where the transient population was greater, bringing problems in employment, crime and policing which were magnified in the capital city. The particular concerns and responses of juries and judges in London were not necessarily repeated in other periods or in other parts of the country. Their studies also concerned the period post 1780 when the circumstances of transportation changed and opportunities for custodial sentencing were more commonly available.

This chapter bridges the period between the work of historians such as Walker, Palk and Mackay by examining evidence of the gendered treatment of those accused of theft before the courts of Yorkshire during the mid-eighteenth century, when transportation to America was the principal solution for judges and justices sentencing men and women who successfully pleaded benefit of clergy or as the recommended alternative following a capital conviction.

Gendered differences are evident in the types of theft committed by men and women in Yorkshire during the two periods surveyed (1735-1745 and 1765-1775), as are gendered differences in conviction rates and sentencing patterns. This chapter examines evidence that during a period of population growth in the county there was little change in the number of women accused of theft, compared to an increase in the number of men accused of similar offences, which resulted in a general decline in the percentage of indicted women who were accused of crimes against property over the course of the century. It is possible that the reduction in the indictment of women for theft was not due solely to a growing leniency towards women but because women more frequently participated in

[10] Palk, Gender, Crime and Judicial Discretion, p. 65.

acquisitive offending during times of need, which was more apparent during the earlier of the two periods surveyed.[11] Nevertheless, the data collected for this thesis demonstrates that the percentage of women accused of stealing household goods and clothing was consistently higher than for men across the two periods surveyed. It provides evidence to support that found in other gendered studies on the nature of female larceny and women's involvement in the growing market for stolen goods, particularly in the emerging urban environments. Although not numerically high, the percentage of women indicted for burglary in Yorkshire provides evidence of the bravery and audacity of some female offenders, although the evidence from the assize records is of the reluctance for the judiciary to allow a woman to hang.

Background (theft)

The eighteenth century witnessed a flowering consumer society, which in turn required new legislation to satisfy the concerns of men of property and influence who feared that their interests were at risk.[12] Parliament failed to take a structured approach to the implementation of new laws and instead responded to the interests of private members with a multiplicity of statutes that created new offences and imposed additional punishments. This was demonstrated by parliament's failure to draw up one cohesive statute to deal with the issue of theft of livestock, as one statute removed the benefit of clergy from the capital offence of sheep stealing in 1741, while the benefit was removed from those who stole cattle by a second statute enacted in the following year.[13] Finer points of statutory interpretation developed over time through the decision of judges in the higher courts, in

[11] Beattie, J.M. (2002, first published 1986) Crime and the Courts in England 1660-1800, Oxford: Oxford University Press, pp. 226-234; Hay, D. (1982) 'War, Dearth and Theft in the Eighteenth Century', Past and Present, 95, pp. 117-160, p. 138; King, Peter (2006, first edition) Crime and Law in England, 1750-1840: Remaking Justice from the Margins, Cambridge: Cambridge University Press, p. 213; see also, Wells, R. (1988) Wretched Faces, Famine in Wartime England, 1763-1803, Gloucester: Alan Sutton, New York: St Martin's Press.

[12] Berg, Maxine (2004) 'In Pursuit of Luxury: Global History and British Consumer Goods in the Eighteenth Century', Past and Present vol. 182 (1): 85-142, in which Berg considers the effect of advances in global trade in fostering new consumer cultures.

[13] 14 Geo. II, c.6 (1741) Sheep Stealing Act; 15 Geo. II, c.34 (1742) Theft of Livestock Act.

the meantime, it was left to the legal clerk or circuit judge to determine how best to interpret and apply the law.[14] Confusion as to what livestock might be covered by the statutes of 1741 and 1742 led to a note on the interpretation of the statutes being inserted in the minutes of the assizes for Yorkshire in July 1742: "The explaining act for the last Sheep Stealing Act explains the words other Cattel to extend to Bull, Cow, Ox., Steer, Bullock, Heifer, Calf or Lamb".[15]

Defining theft

While all crimes of theft were felonies, the specific offences and prescribed punishments varied widely. Various acts of thefts were defined according to the value of goods stolen and the location and manner of the theft. As the monetary level for a grand larceny continued to involve the theft of goods valued in excess of 1s., as a result of inflation the financial limit between a petty larceny and a capital felony increasingly diminished in real terms as the century progressed. As a capital offence it attracted the death penalty unless the benefit of clergy applied, although that benefit was increasingly ousted by new statutes, such as the new livestock legislation.

[14] The judgement of the House of Lords in Powell v Kempton Park Racecourse (1899) confirmed the use of the rule of *ejusdem generis* (of the same kind) in statutory interpretation, bringing within the meaning of a statute things that are of the same class or genus as those mentioned within the statute itself (www.parliament.uk, http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050216/mac-3.htm, accessed 29 August 2012).

[15] TNA ASSI 42/6, July 1742, York county.

Table 6.1: Burglary and theft committed by men, Yorkshire, 1735-1775. [16]

Offence	Q.S.	%	Assizes	%
Total	**1763**		**987**	
Men	**1255**	**71.2**	**834**	**84.5**
Men	**1255**		**834**	
Burglary, breaking and entering	44	**3.5**	179	21.5
Theft Horse	10	**0.8**	117	14.0
Theft other livestock	200	**15.9**	131	15.7
Theft shop	3	**0.2**	25	3.0
Theft cloth	142	**11.3**	71	8.5
Theft non-domestic/ outdoor goods	255	**20.3**	24	2.9
Theft clothing	179	**14.3**	27	3.2
Theft household goods/ food	184	**14.7**	18	2.2
Theft from master/mistress	1	**0.1**	1	0.1
Theft money, gold, silver	109	**8.7**	100	12.0
Theft grain	83	**6.6**	47	5.6
Theft, unspecified	5	**0.4**	71	8.5
Receiving stolen goods	40	**3.2**	23	2.8
		100.0		100.0

[16] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.

Table 6.2: Burglary and theft committed by women, Yorkshire, 1735-1775. [17]

Offence	Q.S.	%	Assizes	%
Total	**1763**		**987**	
Women	**508**	**28.8**	**153**	**15.5**
Women	**508**		**153**	
Burglary, breaking and entering	9	**1.8**	38	**24.8**
Theft Horse	1	**0.2**	0	**0.0**
Theft other livestock	19	**3.7**	5	**3.3**
Theft shop	0	**0.0**	17	**11.1**
Theft cloth	85	**16.7**	11	**7.2**
Theft non-domestic/ outdoor goods	28	**5.5**	6	**3.9**
Theft clothing	137	**27.0**	10	**6.5**
Theft household goods/ food	100	**19.7**	7	**4.6**
Theft from master/mistress	0	**0.0**	1	**0.7**
Theft money, gold, silver	71	**14.0**	24	**15.7**
Theft grain	24	**4.7**	7	**4.6**
Theft, unspecified	6	**1.2**	10	**6.5**
Receiving stolen goods	28	**5.5**	17	**11.1**
		100.0		100.0

The majority of thefts involved minor complaints that fell within the jurisdiction of the quarter sessions so that the lower court dealt with almost twice as many complaints in theft as the assizes (see Tables 6.1 and 6.2). The authority of two magistrates to determine a range of petty offences, without a jury, had extended to some incidents concerning the embezzlement of cloth[18] and, although such customary powers were in theory eroded by subsequent legislation, it is not inconceivable that some justices continued to determine minor complaints while sitting in petty sessions. It is possible that many cases were

[17] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[18] Dalton, Michael (1705) The country justice: containing the practice of the justices of the peace out of their sessions, London: William Rawlins and Samuel Roycroft, p. 23.

retained within the jurisdiction of the lower court by an understating of the value of goods stolen in the bill of complaint.[19] Allegations of capital offences to which the benefit of clergy applied also fell within the jurisdiction of the quarter sessions as it rendered a convicted person liable to be sentenced to transportation for a term of seven years. Even a few indictments which appear to fulfil the criteria of a capital larceny were determined by the lower court and 'pious' juries commonly found defendants guilty of theft to a lower value than that stated in an indictment, or not guilty of breaking into a property but guilty of theft. In those circumstances sentencing magistrates were not acting *ultra vires* (beyond their powers) when the effect of a partial verdict kept the matter within the sentencing jurisdiction of the quarter session justices.

Men were accused of committing 71.2 per cent of all burglaries and thefts presented to the quarter sessions in Yorkshire during the periods surveyed (Table 6.1). At the same time, the more serious acts of theft or burglary attributed to men were consistently higher at the assizes at 84.5 per cent of all such offences. Table 6.1 generally shows that in the lower court, men were more commonly concerned in the theft of livestock and commercial goods, including cloth, and non-domestic items such as horse tackle, iron and timber, although they were also concerned in the theft of clothing and domestic goods. In the higher court, the charges against men most commonly concerned burglary, the theft of horses, other livestock and grain.

During the period surveyed, 28.8 per cent of burglaries and thefts at the quarter sessions for Yorkshire were alleged to have been committed by women, while only 15.5 per cent of the more serious acts of theft or burglary were attributed to women at the assizes (Table 6.2). Table 6.2 generally shows that in the lower court, women were more

[19] See p. 346.

commonly concerned in the theft of low value clothing and household goods, although, many prosecutors may have failed to prosecute the theft of low value items where the goods were recovered. The same figures may also provide evidence of the more lenient treatment of women at the pre-trial stages, particularly when an increasing number of statutes removed the benefit of clergy for first time offenders. Nevertheless, a significant percentage of women stole high value items which might be sold or exchanged and their appearance in the higher court more commonly concerned charges for domestic burglary and the theft of money or items made of precious metals. In both courts, the nature of female offending generally supports Walker's and MacKay's descriptions of female activity within female networks where stolen domestic items were more easily sold or exchanged.[20]

Crimes such as burglary which touched on the sanctity of the home were considered to be, and still are, amongst the more serious offences and few cases would have been appropriate for determination at quarter sessions. Because of the capital nature of the offence the number of burglaries referred to the quarter sessions was never very high and accounted for 3.5 per cent of all male theft and 1.8 per cent of all female theft during the periods surveyed (Tables 6.1 and 6.2). The majority of complaints in burglary were presented to the assizes where allegations against men accounted for 21.5 per cent of all male theft, or an average of eight cases per annum (Table 6.1). Complaints against women for similar offences at the assizes were higher at 24.8 per cent of all female theft, representing an average of 1.7 cases per annum (Table 6.2). This outcome supports Walker's study of theft and related offences in the seventeenth century which led her to observe that a higher proportion of women than men acted as burglars and housebreakers.[21]

[20] Walker, Crime, Gender and Social Order, pp. 167-169; MacKay, 'Why They Stole', pp. 624-625.
[21] Walker, Crime, Gender and Social Order, p.161.

Receiving stolen goods

Given the high incidence of theft during the eighteenth century, one would expect to find more indictments for the crime of receiving stolen goods than are apparent from Tables 6.1 and 6.2. In its origins, receiving stolen goods was a common law misdemeanour, although, by the eighteenth century those who enticed others to steal or encouraged offending through their readiness to purchase stolen goods were increasingly considered to be at least as culpable as the primary offenders, if not more so. After 1718, a person found in receipt of stolen goods could be sentenced more harshly than the perpetrator of the crime because the Transportation Act provided that a person convicted of buying or receiving any stolen goods should be transported for fourteen years.[22] When William Irwin was charged with the theft of yarn and linen valued by the victim at 6s., he benefited from a partial verdict as he was found guilty of theft to the value of 4d. and ordered to transportation for seven years.[23] The value of goods stolen was not a relevant element for the offence of receiving stolen goods and, therefore, at the same sessions his co-accused was found guilty of receiving the items stolen and sentenced to transportation for fourteen years.[24] The same rules applied when a son or husband carried out an act of theft and passed the goods stolen to his mother or wife, so that in those circumstances a woman might be more harshly treated than the male head of the household. When John Ellis was charged with domestic burglary and the theft of cloth he was convicted only of the theft and sentenced to transportation for seven years. His evidence included a statement that he delivered some of the goods to his mother, Isabel Ellis, who sold them on and gave him the money she received from their sale. In contrast, Isabel Ellis was found guilty of receiving stolen goods and sentenced to transportation for fourteen years under the terms of the statute.[25] Likewise, Martha Hasselgrave was convicted on two counts of receiving stolen goods and

[22] 4 Geo. I, c.11 (1718).
[23] WRY QS4/37 41-53, quarter sessions, Wakefield, January 1770.
[24] WRY QD1/521, quarter sessions, Pontefract, April 1770.
[25] See p. 241.

was sentenced to transportation for fourteen years.[26] Her husband, who was indicted for the same offence, was acquitted while another family member, Robert Hasselgrave, was found guilty of theft of goods valued in excess of 20s. and ordered to be branded before being discharged from the court. While Robert Hasselgrave escaped lightly, Martha's sentence reflected the statutory sentencing provisions rather than her gender.

Because of the co-existence of the common law and statutory rules, a small number of complaints for receiving stolen goods were referred to the quarter sessions in Yorkshire where claims for that offence represent 3.2 per cent of male theft (Table 6.1) and 5.5 per cent of female theft during the periods surveyed (Table 6.2). Of the two men and five women convicted of receiving stolen goods at the earlier quarter sessions surveyed, all seven were sentenced on the basis of a misdemeanour rather than under the terms of the statute. At the later sessions surveyed, six men and one woman were convicted for similar offences, of which only two men were sentenced to transportation for fourteen years. One reason for the low incidence of this offence was that people found to be in receipt of stolen goods might escape prosecution if they agreed to act as a witness against the principal offender, which provisions applied equally to claims brought under the statutory regulations.

Receiving stolen goods made up only 2.8 per cent of male theft at the assizes, compared with 11.1 per cent of women accused of the same offence at the higher court (Tables 6.1 and 6.2). As Walker observed, "established networks for the disposal of goods was one important aspect of gendered behaviour", when "lawful networks of exchange and interaction served their unlawful purposes" where women might dispose of clothes, linen

[26] TNA ASSI 42/8,TNA ASSI 41/6, assizes, city of York, March 1769; Coldham, Peter Wilson (1988) The Complete Book of Emigrants in Bondage (1614-1775), Baltimore: Genealogical Publications Co. Inc., p. 399.

and household goods and men might dispose of horses and livestock in the markets they frequented.[27] As Beverley Lemire observed, whether women stole to satisfy personal desires or for financial gain, their activities supported a growing market in second-hand goods, whether come by honestly or not.[28]

The case of Mary Ormand in 1735 raises a number of issues concerning the role played by women in urban environments who might be tempted to steal to order and the readiness of other women to receive stolen goods.[29] It also highlights the exclusion of many husbands from any association with the activities of their wives, even when that involved them bringing stolen goods into the matrimonial home. Ormand claimed that she had been seduced by Elizabeth Torton to break into the house of Sir William Lowther, bart., M.P. for Pontefract, in order to steal. That allegation placed Torton in a precarious position because, if convicted, she was likely to have been sentenced to fourteen years transportation.[30] Torton accepted that she had purchased one item of clothing from Ormand and gave evidence that another stolen item had been left in the house of Jane Hickeringills, another of the co-accused. Torton's willingness to give accomplice evidence against Ormand and Hikersgills acted in her favour and she was acquitted of the charges against her.[31] Michael Colburne, the husband of a third co-accused, was also asked to give evidence against Ormand and Torton; and his evidence must have weighed in his wife's favour, as she too was acquitted by the petty jury.[32] It appears to have been the case during the earlier part of the century that justices and judges in Yorkshire were prepared to forgo the successful prosecution of men and women who received stolen goods, if their

[27] Walker, Crime, Gender and Social Order, pp. 167-168.
[28] Lemire, Beverly (Winter, 1990) 'The Theft of Clothes and Popular Consumerism in Early Modern England,' Journal of Social History, vol. 24, No. 2, pp. 255-276, p. 258.
[29] TNA ASSI 45/20/1 ff. 63-94, depositions and recognizances; TNA ASSI 41/2 ff. 119, gaol delivery, city of York, 11 March 1735.
[30] 4 Geo. I, c.11 (1718).
[31] TNA ASSI 45/20/1/63-94; TNA ASSI 41/2/119, city of York, March 1735.
[32] TNA ASSI 45/20/1/63-94; TNA ASSI 41/2/119, city of York, March 1735.

accomplice evidence might secure the conviction of the thief. Although the increase in the indictment of men and women for that offence at the assizes in Yorkshire during the periods surveyed was numerically quite low, the data tends to support Beattie's observation that during the course of the eighteenth century the judiciary began to question the evidence of co-conspirators against each other and demonstrated an increasing desire to punish those who provided a market for stolen goods and encouraged others to steal.[33]

Theft from a shop

For reasons considered in respect of other offences, indictments for shoplifting at quarter sessions would have diminished after the theft of goods valued in excess of 5s from a shop was designated a capital offence in 1699.[34] Despite public perceptions of the rapid increase of shoplifting in the developing towns and cities, allegations of theft from commercial premises represent only 0.2 per cent of male theft at quarter sessions for Yorkshire during the periods surveyed and 3.0 per cent of male theft at the assizes over the same timeframe (Table 6.1). While no women appeared on charges of shop lifting in the quarter session records surveyed, 11.1 per cent of female thieves were charged with that offence at the assizes. The provisions of the Act of 1699 made it very difficult to bring a successful prosecution as it stated that an offence was committed only when a thief stole both 'privately' and 'feloniously' from a shop. No offence was committed if the thief was seen in his or her attempt to steal, although a jury could bring in a partial verdict of guilty of simple larceny. Therefore, in some instances it may have been the practice to indict only for the element of larceny, rather than attempt to prove that goods were taken unseen from a shop.

[33] Beattie, Crime and the Courts, pp. 189, 370-373.
[34] 10 and 11 Wm. III, c.23 s. 2 (1699) An Act to take away clergy from some offenders; Palk, Gender, Crime and Judicial Discretion, p. 40.

Of twenty-seven reported shoplifting offences at the earlier assizes surveyed, the male/female ratio of defendants was 13:14, of which 25.9 per cent resulted in a full conviction and 37.0 per cent resulted in a partial conviction, that is guilty of theft but not from a shop or of goods below the 1s. threshold. The sentences awarded are known for only three cases, each of them concerning female convicts. Mary Atkins was jointly charged with Esther Rawlings for shoplifting items to the value of £11 belonging to James Collins.[35] The case against Rawlings was discharged for want of prosecution, although she remained in gaol on suspicion of perjury.[36] It is possible that Rawlings attempted to benefit by giving false accomplice evidence against her co-accused and that Collins dropped his complaint against her in reliance on that evidence. Atkins was convicted and sentenced to death, but was recommended for mercy and her sentence reduced to transportation for fourteen years.

The second convicted shoplifter, Hannah Nicholson, was jointly charged with Dorothy Fallowfield for the theft of cloth from a shop belonging to George Barratt.[37] Fallowfield was acquitted, while Nicholson (who was married) was acquitted of shoplifting but convicted of theft and sentenced to transportation for seven years.[38] The third convicted shoplifter was Mary Dixon, who was similarly sentenced to transportation for seven years, having been found guilty of shoplifting to the value of 4s 10d, that is, below the capital threshold for the offence.[39] These three cases reflect the three possible extensions of mercy for those believed to be guilty of some offence but not necessarily deserving of a death sentence: a capital sentence remitted for transportation; a partial conviction for the theft only; and the undervaluing of goods stolen below the capital threshold. Unfortunately,

[35] TNA ASSI 45/21/1/1; TNA ASSI 41/3, Crown minutes, York, March 1737.
[36] TNA ASSI 44/51 and 52; TNA SP36/41/295; TNA SP44/83/196-197.
[37] TNA ASSI 45/21/4/52 ff. F-H; TNA ASSI 41/3, Crown minutes, York City, March 1740; TNA ASSI 41/6.
[38] TNA ASSI 42/8; TNA ASSI 44/54.
[39] TNA ASSI 41/3, Crown minutes, York City, March 1743.

there are no convictions identified against men for the same offence at the earlier assizes to allow a gendered comparison on sentencing.

There are only eight clear cases of shoplifting at the later assizes surveyed, concerning six men and two women. The only person convicted for the full offence was Joseph Barnes who was charged with stealing ribbon valued at 60s from a shop. Barnes was initially sentenced to death but reprieved for transportation for fourteen years on the recommendation of the trial judge.[40] Other men and women escaped a capital sentence by partial verdicts finding them guilty of a simple felony and an undervaluing of the items stolen. Richard Harrison and Mary Levens separately received partial verdicts of simple theft below the 1s. threshold for a grand larceny. Harrison was convicted of theft of goods valued at 2d (originally valued at 2s.), for which he was sentenced to be whipped, while Levens was convicted of theft of goods valued at 10d (originally valued at 10s.), for which she was sentenced to be whipped and serve three months in gaol. Their sentences appear to reflect the seriousness of the offence rather than the gender of the accused.

Domestic goods and trade implements

The theft of general household items by men referred to the lower court in Yorkshire accounts for 14.7 per cent of all male theft, while women accused of similar offences was consistently higher at 19.7 per cent of all female theft (Tables 6.1 and 6.2). In contrast, complaints for the same offences at the assizes represent only 2.2 per cent of male theft and 4.6 per cent of female theft. While these figures may be explained by a preference of the judiciary to retain minor offences at the quarter sessions, they also reflect the general demand for new consumer goods and the links between female crimes and the home and a

[40] TNA ASSI 41/6, York county, March 1772.

tendency for women to be concerned in the theft of lower value goods of a domestic nature.

Because of the higher value attached to the theft of money and items made of precious metals, a greater percentage of crimes of that nature were referred to the higher court. Therefore, theft of valuables at quarter sessions account for 8.7 per cent of male theft and 14.0 per cent of female theft (Tables 6.1 and 6.2). At the same time, complaints concerning the theft of valuable goods in the higher court account for 12.0 per cent of male theft and 15.7 per cent of female theft. The higher percentage of women accused of the more serious offences runs contrary to the argument of the undervaluing of goods stolen by women to avoid the harsher punishments attached to grand larcenies.

While women's movements are often associated with the home as wife, mother or domestic servant, their freedom to move within domestic settings allowed them to acquire knowledge from friends, neighbours and other servants of what goods were available and when and how access to them might be obtained. Mary Kettlewell lived with her husband and two young children and supplemented the family income by taking in lodgers. Her confinement in a domestic setting did not limit her ability to obtain access to valuable goods. On an evening when her husband and lodger (the aforementioned Christopher Tancred J.P.)[41] were away from the house she broke into a chest belonging to Tancred and stole over £63 in money.[42] After concocting a tale of burglary she later confessed to the crime. Not surprisingly, men were more frequently charged with the theft of non-domestic items such as horse tackle, tools, wood and metal than women. Allegations at quarter session for the theft of non-domestic items represent 20.3 per cent of male theft and 5.5 per cent of female theft during the periods surveyed. Many of the items falling within this

[41] See pp. 60, 118, 133.
[42] TNA ASSI 45/20/1 ff. 35-39; TNA ASSI 41/2 f. 120, gaol delivery, county of York, 11 March 1735.

category tended to be of lower value, therefore, complaints of theft for non-domestic items referred to the assizes account for only 2.9 per cent of male theft and 3.9 per cent of female theft.

Theft from a master

The relative absence of the offence of theft from a master or mistress from Tables 6.1 and 6.2 arises because such offences fell within the common law crimes of fraud and dishonesty, where acquisition did not include the necessary taking 'by force of arms' for theft, when victims handed over goods or money willingly to one of their servants.[43] As a result, there are few references in the court records for Yorkshire that identify acts of theft by a domestic servant from an employer. There are no cases at quarter sessions and only two cases at the earlier assizes surveyed: one concerned and allegation of the theft of a male servant from his master and the other a female servant who stole from her master. An exception to the common law rules existed under a statute of 1529 which made it an offence for a servant to appropriate or 'embezzle' goods from his master where the value exceeded 40s.[44] As a result, when Daniel Drummond was charged at the York Assizes with theft from his master of three guineas (63s.) he was found guilty and sentenced to transportation for seven years.[45] Another employee who admitted to having accepted a stolen half guinea from Drummond, in return for not reporting him, escaped prosecution for receiving stolen goods by giving evidence against Drummond, although it is possible that he was punished informally by the loss of his employment.

[43] 39 and 40 Geo. III, c.87 (1799) An Act in relation to thefts by navigators on the River Thames recognised theft from a master as a felony.
[44] 21 Hen. VIII c.7 (1529): Embezzlement by servants Act. The provisions of the Act did not extend to apprentices or servants under the age of 18.
[45] TNA ASSI 45/20/1/8-14; ASSI 41/2/120, assizes, county of York, March 1735.

The one case alleging theft by a female servant found in the assize records for 1742 concerned an indictment under the same statutory provisions.[46] Ann Willoughby was accused of the theft of a gold coin valued at 36s. from the top of a chest in her master's house and £6 in coins from inside the same chest on an earlier occasion.[47] In her written statement, the mistress of the house (Elizabeth Greenwood) explained that the gold coin had been left out to trap a suspected thief in the household and that she saw that Willoughby "made a pretence to seek" for the gold coin and "found" it on the floor. Willoughby was charged with the theft of the 36s. coin but acquitted at her trial. If no evidence were presented to prove that Willoughby stole other money from inside the chest, any offence committed by her fell below the statutory 40s. threshold and a direction to acquit was inevitable. In that instance it is more likely that Willoughby was saved by the evidence against her not falling within the terms of the statute, not because of her gender. In the absence of other similar cases for the region one may conclude that justice was deemed to be served by some combination of the return of goods stolen, an arrangement whereby the servant 'worked off' the value of goods taken, some form of corporal punishment by the master, or the dismissal of the accused servant with loss of good character and no references.[48]

Theft and the cloth trade

Indictments for theft associated with the woollen trade appear regularly throughout the periods surveyed when Yorkshire was the centre for the manufacture of cloth in England. Increasing incidents of theft associated with the textile industries during the periods surveyed did not necessarily come about because of any changes in offending behaviour, rather it reflected increasing pressure from manufacturers to eradicate workers' privileges, undermine trade customs and redefine labour-capital relations, which resulted in a series of

[46] 21 Hen. VIII c.7 (1529) Embezzlement by servants Act.
[47] York Courant 16 Mar 1742; TNA ASSI 45/22/2/163-164; TNA ASSI 42/6 gaol delivery, city of York, 15 March 1742.
[48] See p. 102; Baker, J.H. (2007, fourth edition, first published 1971) An Introduction to English Legal History, Oxford: Oxford University Press, pp. 534-535.

legislative interventions directed at embezzlement by employees working in those industries.[49] Punishment under those statutes was by way of a fine, or a whipping and a short term of hard labour in the house of correction; thus keeping the offences within the jurisdiction of the lower court.[50] Otherwise, magistrates sitting in petty sessions had some powers to punish those who embezzled cloth which may have kept some minor complaints outside the reporting requirements of the formal court structure.[51] Leeds was at the centre of the wool and cloth industry during the eighteenth century and it is no co-incidence that over 90 per cent of claims for the theft of cloth presented to the quarter sessions between 1765 and 1775 were heard in the courts for the West Riding. Of those indictments 90 per cent were brought against men, many of whom were likely to have been employed in the industry.

At quarter sessions for the periods surveyed, theft of cloth accounts for 11.3 per cent of male theft (Table 6.1) and 16.7 per cent of female theft (Table 6.2). Emsley and Becker each concluded that considerations of the *femme covert*, particularly in the lower court, discouraged employers in the Yorkshire worsted factories from prosecuting married women under the protection of their husbands or single women below the age of majority (age twenty-one) and under the protection of their fathers for the theft of cloth for all but the most serious cases, while magistrates and other local officials (including those in

[49] 13 Geo. II, c.8, s.2 (1740) An Act for preventing of Abuses and Frauds, addressed embezzlement by those involved in the manufacture of leather goods; 22 Geo. II, c.27, ss.1-2 (1749), An Act to prevent frauds and abuses. See, Becker, Craig (November, 1983) 'Property in the Workplace: Labour, Capital and Crime in the eighteenth-Century British Woollen and Worsted Industry', Virginia Law Review, vol. 69, No., 8, pp. 1487-1515, at pp. 1490-1492, p. 1500; Randall, A. J., (1990) 'Peculiar perquisites and pernicious practices: embezzlement in the West of England woollen industry, c1750-1840', International Review of Social History 35 (2), pp. 193-219, p. 194.

[50] 1 Anne, stat 2, c.22 s.2 (1702): An Act for preventing of Abuses and Frauds, set the level of punishment for the embezzlement of wool or yarn by making the fine payable at double the value of materials acquired or a public whipping and 14 days hard labour; 22 Geo. II, c.27, ss.1-2 (1749), an Act for preventing of frauds and abuses provided that those found guilty of receiving embezzled goods had the right to pay £20 by way of a fine if they wanted to avoid punishment by whipping and hard labour. The origin of these statutes lay in 7 Jac., c.7, s.2 (1609): An Act for the punishing Deceit and Frauds, 'Receivers punishable as Principals'; Becker, 'Property in the Workplace', pp. 1487-1515.

[51] See p. 59.

Yorkshire) were likely to frustrate the attempts of manufacturers to enforce legislation for fear of the workers' response.[52] Nevertheless, women provided a ready market for stolen cloth as evidenced by the percentage of women prosecuted for the theft of cloth in both courts. Earlier legislation associated with the cloth trade included the removal of the benefit of clergy in 1725 from those convicted of cutting or stealing cloth when the offence included an element of burglary.[53] Nevertheless, complaints at the assizes relating to the theft of cloth represent 8.5 per cent of male theft (Table 6.1) and 7.2 per cent of female theft (Table 6.2). That some men (and a few women) cut and stole cloth reflected both, dissatisfaction with pay and conditions by workers that were prevalent in the mid-eighteenth century and the ready market for the goods they stole.

Theft of consumables

That the theft of grain accounts for 6.6 per cent of all male theft and 4.7 per cent of female theft at quarter sessions and 5.6 per cent of male theft and 4.6 per cent of female theft at the assizes (Tables 6.1 and 6.2), points to the fact that ready access to staple foods at an affordable price was an on-going concern during the eighteenth century. That in turn makes the food riots of 1740 described in chapter 7 even more significant, as an example of public response to food shortages.

[52] Emsley, Clive (2010, fourth edition, first published 1987) Crime and Society in England, 1750-1900, London: Pearson Longman, pp. 98-99.
[53] 12 Geo. I, c.34, s.7 (1725) An Act to prevent unlawful Combinations of Workmen employed in the Woollen Manufactures declared it a felony, punishable by death without benefit of clergy, to 'break into any house or shop' with intent to 'cut or destroy any serge or other woollen goods in the loom, or any tools employed in the making thereof'; Becker, 'Property in the Workplace', p. 1512.

Theft of Livestock

Table 6.3: Theft of livestock, 1735-1775, 1735-1775. [54]

	Livestock	Sheep	%	Cattle	%	Pigs	%	Chickens, hens, cocks, turkey	%	Geese and ducks	%	Other [55]	%	Asses	%	Total %
Quarter Sessions																
M	**203**	71	35.0	13	6.4	10	4.9	52	25.6	44	21.7	6	3.0	7	3.4	100
F	**19**	0	0.0	2	10.5	1	5.3	11	57.9	4	21.1	1	5.3	0	0.0	100
Assizes																
M	**131**	106	80.9	20	15.3	2	1.5	0	0.0	2	1.5	1	0.8	0	0.0	100
F	**5**	1	20.0	0	0.0	4	80.0	0	0.0	0	0.0	0	0.0	0	0.0	100

Livestock theft tended to reflect changes in social need and Beattie and King point to the severe dearth of 1740 as being a period in which there was a considerable increase in indictments for the theft of sheep, indicating that some animals were stolen to supplement the family diet.[56] Parliament responded with the creation of new statutory offences which carried capital sentences for the theft of livestock,[57] nevertheless, theft of livestock represents 15.9 per cent of male theft at quarter sessions and 15.7 per cent of male theft at the assizes across the periods surveyed (Table 6.1). In contrast, allegations of livestock theft at quarter sessions accounts for only 3.7 per cent of female theft and 3.3 per cent at the assizes (Table 6.2). The only two women who appeared at quarter sessions for the theft of larger livestock were charged with offences committed prior to the Act of 1742, while the case against one woman referred to the assizes in 1774 for the theft of a sheep was dismissed for want of prosecution.[58] It is possible that once the benefit of clergy was removed from the theft of sheep and cattle, that prosecutors became more reluctant to indict a woman on a capital charge.

[54] Collated from extant records for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[55] Bee hives, rabbits, fish.
[56] Beattie, Crime and the Courts, pp., 170-172; King, Peter (2000) Crime, Justice and Discretion in England 1740-1820, Oxford: Oxford University Press, pp. 213-214.
[57] See pp. 244.
[58] TNA SSI 45/31/2/38-39; TNA ASSI 42/8, York County, March 1774, case of Margaret Craggs.

Men were the main perpetrators of livestock thefts, particularly when it came to their involvement in the theft of sheep. The main change in offending patterns between the two periods examined is that the theft of sheep virtually disappeared from the quarter sessions for Yorkshire following the livestock acts of 1741/42. Only one case at quarter sessions between 1742 and 1745 concerned the theft of a sheep by a man. After 1742 it should have been the case that all allegations under the livestock statutes were transferred to the assizes and between 1765 and 1775 at least three of the four charges against men for sheep theft at quarter sessions were transferred to the assizes. Four cases of cattle theft were determined by the lower court but two other indictments for the offence were referred to the King's Bench. However, cattle theft was not as prevalent an offence in the region as sheep theft and there may have been less public concern with that particular crime.[59] Despite the reclassification of sheep theft as a capital offence there was no reduction in the more serious instances of sheep rustling which were committed almost exclusively by men and referred to the higher court.

Ties to the home meant that women had fewer opportunities to steal livestock, particularly in the urban areas. Walker noted that most women who stole a hen or goose did so to supplement the family diet or for sale or to exchange for other commodities.[60] A married woman's desire to provide a good meal for her family, particularly at feast times, might explain why Hannah Nicholson's conviction for the theft of a goose occurred at Christmas-time.[61] It seems that women were less likely to risk hanging or transportation for the theft of a sheep or a lamb, particularly if they had a family to care for, although they continued to be prepared to risk a fine or whipping for the theft of an occasional hen to

[59] Wells, R.A.E. (1984) 'Sheep Rustling in Yorkshire in the age of the Industrial and Agricultural Revolutions', Northern History, Leeds: University of Leeds, pp. 127-144.
[60] Walker, Crime, Gender and Social Order, p. 169.
[61] ERY QSV/2/9, quarter sessions, Beverly, Christmas 1737.

supplement the family diet at times of inadequate incomes.[62] In contrast, men in particular were involved in the theft of gaming cocks, which birds would have been of greater value than an ordinary hen, and many owners would have been prepared to prosecute when the culprit was identified. Only one woman can be identified as having been involved in the theft of a gaming cock, although a gaming bird could of course be eaten.

Horse theft

It is unexpected to find claims in horse theft referred to the lower court, although the offence represented less than one per cent of all thefts during the quarter session records surveyed. Horse theft was regarded as one of the more serious offences and benefit of clergy had been withdrawn from the offence in the mid sixteenth century.[63] To combat the offence, an efficient voucher system had been in operation for many years to control the legitimate trade in horses and deter the disposal of stolen animals.[64] Newspapers such as the Leeds Intelligencer carried regular advertisements offering substantial rewards for the return of stolen animals.[65] Nevertheless, horse theft remained prevalent in Britain throughout the eighteenth century when it was most commonly committed by adult males employed in agricultural occupations, while a few, such as Dick Turpin, worked in organised gangs.[66] Therefore, one would expect all 'true' bills for that offence to have been transferred directly to the assizes. It must be the case, therefore, that indictments referred to

[62] Wells, 'Sheep Rustling in Yorkshire', p. 134.
[63] 37 Hen. VIII, c.8, s.2 (1545) An Act removing Benefit of Clergy from any person stealing a horse; Beattie, Crime and the Courts, pp., 167-169.
[64] Woodward, Nicholas (2009) 'Horse Stealing in Wales, 1730-1830', The Agricultural History Review, vol. 57, Part 1, pp. 70-108, p. 71, n.6: 'when the sale took place at a fair, details about the horse and sometimes information about both the buyer and seller was included in a toll book. The transaction was also witnessed and the buyer received a certificate of purchase'; Edwards, Peter (1988) The Horse Trade of Tudor and Stuart England, Cambridge: Cambridge University Press, pp. 110-112.
[65] The Leeds Intelligencer, 30 July 1754 carried a notice of a 'Reward of half a Guinea for return of a Sad brown bay 4year old Mare'; while The Leeds Intelligencer, 14 January 1755 advertised a 'Reward of a Guinea for a nine year old Bay Gelding'.
[66] Edwards, The Horse Trade of Tudor and Stuart England, chapter 4; Woodward, 'Horse Stealing in Wales', pp. 70-108; Sharpe, James (2005) Dick Turpin: The Myth of the English Highwayman, London: Profile Books.

the quarter sessions were presented there by reason of convenience for the victim-prosecutor.

Women are relatively absent from claims in horse theft, although it is possible that women acted as 'fences' for stolen livestock as they did for other stolen goods or took care of the animals until they could be passed on.[67] The only woman linked to the offence of horse theft during the periods surveyed was Grace Fretwell, a married woman, and representing just 0.2 per cent of all female theft at quarter sessions (Table 6.2). There is no evidence that her husband was considered to be her accomplice as she alone was charged in 1766 with the theft of a horse valued at 40s. (one of the lowest valued horses in the records) and following her guilty plea she was fined 6d.[68] A sample of one is insufficient to draw any gendered conclusions but one can observe that her case was not remitted for trial at the assizes, despite the fact that an Act of 1752 allowed for the recovery of the costs of a successful prosecution. In the case of Fretwell, the prosecutor may have been satisfied with the return of his animal, leaving it to the court to determine the appropriate punishment. In contrast, and in the intervening years between the two periods surveyed, William Skelton of Yorkshire took immediate advantage of the statute of 1752 and, following the successful prosecution of Ann Nightingale for a series of horse thefts between 1750 and 1753, Skelton recovered costs of £1 18s 8d.[69] Nightingale on the other hand was sentenced to death, although she was recommended for mercy by the presiding judge and her sentence remitted to transportation for fourteen years.[70]

[67] Edwards, The Horse Trade of Tudor and Stuart England, p. 121; Walker, Crime, Gender and Social Order, p. 168.
[68] WRY QS4/35 104-126, quarter sessions, Pontefract, April 1766.
[69] TNA ASSI 45/25/1/101-106 (1753), witness statements and list of costs for the prosecution, Castle of York, Summer Assizes 1753
[70] TNA SP44/85/396-398, circuit memorial, June 1754.

Men were predominantly responsible for recorded horse thefts at the assizes at 14.0 per cent of male thefts (Table 6.1). The relatively high incidence of recorded horse theft reflects the law prohibiting compounding a felony, improvements in the voucher system, the increasing availability of newspapers to advertise losses and the development of private associations for the detection of horse theft.[71]

Conviction rates (theft)

As demonstrated in Table 6.4, the conviction rate for the full offence of theft alleged at the quarter sessions for Yorkshire accounts for 34.0 per cent of all male theft and 37.6 per cent of all female theft. At the same time, partial verdicts were awarded for 28.5 per cent of male theft and 31.0 per cent of female theft at quarter sessions. In contrast, the conviction rate for the full offence of theft alleged at the Yorkshire assizes accounts for 48.1 per cent of all male theft and 28.9 per cent of all female theft, while partial verdicts were awarded for 15.6 per cent of male theft and 26.8 per cent of female theft. The different outcomes for full and partial verdicts can be interpreted as evidence of gendered leniency towards women in the higher court, where capital sentences might apply and the greater condemnation of women in the lower court where the sentencing options excluded a capital outcome.

[71] King, Crime, Justice and Discretion, p. 53; Beattie, Crime and the Courts, p. 50; King, Peter, 'Prosecution Associations' in D. Hay & F. Snyder, Policing and Prosecution in Britain 1750-1850, Oxford: Clarendon Press, pp. 171-207, at pp. 186, 189-192.

Table 6.4: Conviction rates for theft (excluding burglary), Yorkshire, 1735-1775. [72]

	Complaints	Discharged for want of prosecution	%	Guilty	%	Partial verdict	%	Not guilty	%	Transfer to assizes	%	Total %
Quarter Sessions												
M	**1064**	16	**1.5**	362	**34.0**	303	**28.5**	357	**33.6**	26	**2.4**	100.0
F	**449**	1	**0.2**	169	**37.6**	139	**31.0**	131	**29.2**	9	**2.0**	100.0
Assizes												
M	**584**	7	**1.2**	281	**48.1**	91	**15.6**	205	**35.1**	0	**0.0**	100.0
F	**97**	2	**2.1**	28	**28.9**	26	**26.8**	41	**42.3**	0	**0.0**	100.0

Sentencing (theft)

Whipping

Whipping was the more common sentence for those convicted for theft, probably for the reason that a fine was not an appropriate sentence for those who stole from need.[73] 63.5 per cent of male convicts in theft were sentenced to be whipped, branded or placed in the pillory for committing acts of theft of low value items (Table 6.5). Female offenders were less likely than their male counterparts to be of independent means, in order to pay a fine, so that 77.9 per cent of all female convictions for theft were punished by similar orders. Orders for whipping were less commonly applied at the assizes for Yorkshire where 10.2 per cent of male thieves and 14.0 per cent of female thieves were ordered to be whipped. Beattie's survey of the use of whipping at Surrey assizes also demonstrated a higher rate of women than men sentenced to be whipped for theft between 1722 and 1749, although no figures are given for the later part of the century.[74] While no women convicted at the assizes for Yorkshire between 1765 and 1775 were punished solely by an order to be whipped, two women ordered to serve prison sentences were also ordered to be whipped, as were an increasing number of male convicts.

[72] Collated from extant records of known outcomes for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[73] See pp. 110-111.
[74] Beattie, Crime and the Court, p. 507, Table 9.6.

Table 6.5: Sentencing for theft, Yorkshire, 1735-1775. [75]

	Convictions	Capital sentence only	%	Commuted to Transportation or other	%	Transportation	%	Fine	%	Whipped/Branded/Pillory	%	Gaol/House of Correction	%	Total %
Quarter Sessions														
M	**594**	0	**0.0**	0	**0.0**	157	**26.4**	52	**8.8**	377	**63.5**	8	**1.3**	100.0
F	**267**	0	**0.0**	0	**0.0**	51	**19.1**	5	**1.9**	208	**77.9**	3	**1.1**	100.0
Assizes														
M	**344**	22	**6.4**	114	**33.1**	151	**43.9**	4	**1.2**	35	**10.2**	18	**5.2**	100.0
F	**43**	0	**0.0**	4	**9.3**	29	**67.4**	0	**0.0**	6	**14.0**	4	**9.3**	100.0

Fines

Fines for a theft were generally imposed on men convicted at quarter sessions and a few at the assizes (Table 6.5). In contrast, they were rarely ordered against women in the lower court, and never at the assizes during the periods surveyed for Yorkshire. 8.8 per cent of male thieves were ordered to pay fines at the quarter sessions when fines imposed between 1735 and 1745 ranged from between 2d. and 5s. However, one man was fined £10 and ordered to spend two weeks in the house of correction for the offence of receiving stolen goods.[76] Fines of between 1s. and £3 generally appear during the period 1765-1775, although an exceptional fine of £40 was imposed on one man convicted of receiving stolen goods.[77] For reasons already considered, few women were fined at quarter sessions for stealing and the fines imposed were generally limited to 6d. each, when women had less access to money. In contrast, Beattie's survey of Surrey assizes held in 1749 includes no separate evidence on the use of fines imposed on either men or women.

[75] Collated from extant records of known outcomes for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[76] As at quarter sessions, some defendants during the earlier period surveyed continued to be convicted for the common law misdemeanour of receiving stolen goods, rather than under the terms of the statute, although the higher sentence reflects the relative seriousness of the offence. See pp. 251.
[77] See the case of William Brown, see p. 109.

Even though the livestock Acts of 1740 set transportation for seven years as the appropriate sentence for a first conviction for the theft of sheep, the law was not imposed uniformly at quarter sessions. Justices at the sessions for Beverley, Skipton and Sheffield variously ordered sentences of whipping or a small fine following convictions of men for the theft of sheep at sessions held between October 1740 and July 1743. Likewise, in 1745 Mary Bullock was fined £5 and ordered to a term of two months in the house of correction for receiving stolen goods, when she should have been ordered to transportation for fourteen years.[78] These cases highlight the problem of ensuring that statutory rules were consistently applied when, in the absence of any central supervision, there was little done to correct breaches of procedures and sentencing guidelines.

Men were rarely fined at the assizes and there is no record of any female convicts fined for theft in the higher court, although one particular feature of the later assize sessions surveyed was the growing use of combined sentences involving an order to be whipped or fined attached to an order for a term in gaol or the house of correction. It is no co-incidence that the majority of combined sentences were passed after Easter 1774 (the Boston Tea Party having occurred in December 1773) and following which event the government had to consider alternatives to transportation to America.[79]

[78] NRY York City, YK QS 1740-49 ff. 153-156, 157, 170, January 1745.
[79] Anon. American Revolution Timeline, http://www.history-timelines.org.uk/events-timelines/01-american-revolution-timeline.htm, accessed 10 July 2012.

Transportation

At the quarter sessions for Yorkshire surveyed for this thesis, 26.4 per cent of men convicted for theft were sentenced to transportation, compared with 19.1 per cent of women thieves during the periods surveyed (Table 6.5). The jurisdiction of the lower court meant that its sentencing powers in respect of transportation were generally limited to offences for which the appropriate term of exile was seven years. Nevertheless, when indictments for offences such as receiving stolen goods were determined in the lower court an order for transportation for fourteen years might be applied.

Taking other offences into account when sentencing, rather than going through the process of trying one individual on multiple indictments, hides the true nature of sentencing practices demonstrated in Table 6.5. Of all the men convicted of theft and ordered to transportation at the quarter sessions for Yorkshire between 1735 and 1745, over one half had been indicted for other thefts for which they were not tried. In contrast, about 70.0 per cent of women convicted of similar offences had been indicted for at least one other incidence of theft at the same session. In each case, it is likely that those 'other' offences were taken into account when passing sentence and, therefore, provides evidence of a requirement for greater evidence of 'criminality' by female convicts. At the quarter sessions for 1765-1775, only one-third of the men and over 40.0 per cent of women transported for theft had been indicted, but not tried, for other similar offences at the same sessions, which tends to suggest the more rigorous sentencing practices in the later period surveyed, although women continued to fare better than their male counterparts.

The most common sentence passed at the assizes for male and female prisoners convicted of theft was an order for transportation for a period of seven years, where 43.9 per cent of men and 67.4 per cent of women convicted of theft were sentenced to

transportation (Table 6.5). It is likely that the harsher sentencing of women reflected the fact that only the most serious cases were referred to the higher court, therefore, it is possible that these sentences reflect the nature of the offending as much as the gender of the offender.

There are few comparative studies on the use of transportation because of changes in sentencing practices that took place following the Act of 1718 and those that followed from the loss of the American colony in 1775. Although Beattie's survey for Surrey of non-capital punishments for property offences (1722-1749) demonstrated a different male female ratio, when 59.6 per cent of male theft and 46.2 per cent of female theft resulted in orders for transportation, nonetheless, both sets of data demonstrate the significance of transportation in sentencing men and women convicted of offences against property.[80] It also points to the need for further studies of other regions based on the mid-eighteenth century to better understand sentencing practice during the era of transportation to America. The outcome of partial verdicts at the assizes for Yorkshire resulted in some men and a few women being ordered to be fined or whipped, while the majority of male and female convicts were ordered for transportation. The mercy extended to convicted thieves was in the failure to find them guilty of a capital larceny.

Capital convictions and mercy

Assize judges had wider sentencing powers than justices in the lower court and, therefore, those thefts which passed the capital threshold should have carried a capital sentence. Nevertheless, this was a power sparingly used. Peter Edwards observed that during the Tudor and Stuart periods all principal offenders and accessories in horse theft might expect only the death penalty because of the seriousness with which the offence was

[80] Beattie, Crime and the Courts, pp. 507-508.

viewed, although many benefited from a reprieve for a lower sentence.[81] However, during the period 1735 to 1745 only 81.8 per cent (36/44) of those convicted of horse theft were sentenced to death, of which 61.1 per cent (22/36) were reprieved for transportation. Even when statutory provisions appear to have been clear and unambiguous, the discretionary powers within the legal system allowed for other sentencing options. Partial verdicts were passed on two men who were found guilty of the theft of a horse valued at 1s. and even then the partial verdicts must have followed an understating of the value of the horses in the original bills, when the values given were £2 6d and 12s. Nonetheless, notorious horse thieves and men who operated in organised gangs were less likely to be recommended for mercy as illustrated in the case of John Palmer (alias Dick Turpin) who was capitally convicted without reprieve in York together with his accomplice, John Stead.[82]

In the matter of capital convictions, 39.5 per cent of men appearing at the assizes were capitally convicted for theft, although only 6.4 per cent of male thieves failed to have a capital sentence respited for transportation or some other order (Table 6.5). Alternative sentences following a pardon, particularly during the later period surveyed, were varied and ranged from a free pardon, to enlistment, a period in gaol, or transportation for periods of seven years, fourteen years and life. In contrast, only four women received a capital sentence for theft, three of which were respited for transportation for fourteen years. The one woman capitally convicted in 1770 for receiving stolen goods was given a free pardon. The relative absence of women from capital convictions generally reflected the fact that they tended to commit less serious offences than men and that they were treated more leniently than men if capitally convicted.

[81] Edwards, The Horse Trade of Tudor and Stuart England, p. 134; 31 Eliz. I, c.12 (1589), An Act to avoid Horse stealing.
[82] TNA ASSI 41/3, Crown minutes, York, March 1739; TNA SP36/47/86,100; York Courant, 27 March 1739; Sharpe, Dick Turpin, p. 28.

In addition to the known verdicts for men shown in Table 6.5, a further 11 men escaped trial following their 'election' to enlist in the army. None of the men had been charged with having stolen items of great value but these events took place during the period of the War of Austrian Succession when young men would have been encouraged to enlist in one of the forces as an alternative to a trial or as a substitute for other sentencing options.[83] Overall, conviction and sentencing patterns for theft tend to support Vic Gatrell's submission that there was a growing sense that women ought to be pitied not punished, when a greater percentage of women than men benefited from a partial verdict.[84] That verdict allowed a higher percentage of women than men to be corporally punished at quarter sessions for minor offences, rather than be transported, and a higher percentage of women than men to be sentenced to transportation at the assizes, rather than sentenced for one of the new capital offences. Any evidence of long terms of transportation served by women convicted for receiving stolen goods reflects the nature of female offending and statutory provisions rather than the harsher treatment of women *per se*.

Defining burglary

The gravity of the offence of theft or attempted theft was aggravated when it included entry onto the property of another. Burglary was a common law felony (punishable by death) and generally defined as "a breaking and entering the mansion-house of another, in the night, with intent to commit some felony within the same, whether such intent be executed or not".[85] Such was the importance attached to a man's home and property that it was not necessary to prove that any goods were stolen from the property and evidence of an intent to steal was sufficient to establish that the offence of burglary had been

[83] King, Crime, Justice and Discretion, p. 262, Table 8.1; King, Peter (2002) 'Press gangs and prosecution rates, 1740-1830' in Landau, Norma, Law, Crime and English Society, 1660-1830, Cambridge: Cambridge University Press, pp. 97-116.
[84] Gatrell, V.A. (1996) 'Chivalry and the female victim', in The Hanging Tree: Execution and the English People 1770-1868, Oxford: Oxford University Press, pp. 334-347.
[85] East, Sir Edward Hyde (1803) A Treatise of the Pleas of the Crown, vol. 2, London: J. Butterworth, p. 484.

committed. A series of statutes at the turn of the eighteenth century removed the benefit of clergy from various types of burglary, including: where an occupant of a house was put in fear; where theft from a commercial premises exceed 5s.; and where the value of goods stolen from a domestic property exceeded 40s.[86]

The distinction between house breaking and burglary was that burglary took place at night and house breaking took place in day-light (and as such was not a capital offence).[87] For that reason, burglary was the more serious of the two offences because it occurred at a time when it was more likely that the occupants were at home and most vulnerable. As the difference between burglary and housebreaking depended on the time of day the offence was committed, it is often difficult to differentiate between the two offences in the court records and they are considered in this chapter under the broad heading of burglary except where distinctions are possible.

Conviction rates (burglary)

Burglary was a capital felony and, as such, should have been referred to the assizes, nevertheless as shown in Tables 6.1 and 6.2, complaints in burglary made up a small part of the work at quarter sessions for Yorkshire during both periods surveyed. From a review of the indictments where the distinctions are discernible, it appears likely that the cases retained within the jurisdiction of the lower court were indicted on the basis of an offence committed during the day time. Bills referred to the assizes alleged that the offence was committed at night and/or it concerned the theft of high value items, which kept the

[86] 3 Wm. & M., c.9, (1691), Benefit of Clergy Act removed the benefit from thefts from the dwelling house if someone was in the building and they had been put in fear, and where the value of goods stolen exceeded 1s.; 10 and 11 Wm. III, c.23, (1699) removed the benefit *inter alia* from the crimes of theft from a dwelling house, stables, shop or warehouse of goods valued at 5s. or more; 12 Anne, c.7 (1713) An Act for the more effectual preventing and punishing Robberies removed the benefit when theft occurred from a house or outhouse to the value of £2 or more, even if no breaking took place or any person was present in the property, although such a theft could be prosecuted as a capital offence under a different heading.

[87] 7 Wm. IV, c.20: (1695): An Act for the king's pardon differentiated between a burglary and a house breaking committed in the day time.

offence within the scope of a grand larceny. 77.8 per cent of indictments for burglary/breaking and entering alleged to have been committed by women at quarter sessions were referred to the assizes, compared with 22.9 per cent against men on similar charges (Table 6.6). Although the numbers concerned are very low, the overall impression is of a more critical attitude to women charged for this particular offence.

Table 6.6: Conviction rates for burglary, Yorkshire, 1735-1775. [88]

	Convictions	**Discharged for want of prosecution**	**%**	**Guilty**	**%**	**Partial verdict**	**%**	**Not Guilty**	**%**	**To Assizes**	**%**	**Transfer to K.B.**	**%**	**Total**
Quarter Sessions														
M	**35**	1	**2.9**	14	**40.0**	2	**5.7**	8	**22.9**	8	**22.9**	2	**5.7**	100.0
F	**9**	0	**0.0**	0	**0.0**	0	**0.0**	2	**22.2**	7	**77.8**	0	**0.0**	100.0
Assizes														
M	**163**	1	**0.6**	48	**29.4**	55	**33.7**	59	**36.2**	0	**0.0**	0	**0.0**	100.0
F	**35**	2	**5.7**	7	**20.0**	12	**34.3**	14	**40.0**	0	**0.0**	0	**0.0**	100.0

Very few claims in burglary in either court appear to have been rejected by a grand jury or discharged for want of prosecution, which tends to indicate that both the complainants and grand juries expected those who breached the sanctity of the home to answer the allegations made against them, whatever the gender of the accused (Table 6.6). To that extent, the powers of the court to ensure the prosecution of felons was bolstered by their ability to order recognizances to ensure the attendance of the prosecutors and their witnesses and to commit defendants to gaol pending trial.[89] Of the cases of burglary that remained within the jurisdiction of the lower court, only 5.7 per cent of male defendants were convicted of the lesser offence of breaking and entering, while 40.0 per cent of male

[88] Collated from extant records of known outcomes for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.
[89] See pp. 63-72.

burglaries were convicted for the full offence alleged and another 22.9 per cent of male burglaries were transferred to the assizes. In contrast, 22.2 per cent all of the indictments against women for burglary resulted in an acquittal and the remaining 77.8 per cent were transferred to the assizes (Table 6.6).

When complaints for burglary/breaking and entering were referred to the Yorkshire Assizes 20.0 per cent of women charged with burglary/breaking and entering, compared with 29.4 per cent of men charged with similar offences, were convicted of the full offence alleged. At the same time 34.3 per cent of female defendants and 33.7 per cent of male defendants in burglary benefitted from a partial verdict (Table 6.6). Although the number of women convicted of burglary is too small to enable reliable statistical analysis, the general impression is of a desire by petty jurors to mitigate the harshness of the 'Bloody Code', irrespective of the gender of the person accused. Evidence for this is found when convictions for the full offence of burglary were less than 30.0 per cent of all complaints for that offence, with one third of men and women benefitting from the exercise of partial verdicts.

Sentencing (burglary)

No men or women were convicted of the capital offence of burglary in the lower courts in Yorkshire and no women and a few men were convicted of breaking and entering. Sentencing options were wider for the lesser offences and resulted in 68.8 per cent of men convicted of breaking and entering or simple larceny at quarter sessions being sentenced to pay a small fine and 25.0 per cent ordered to be whipped (Table 6.7). Convictions for the full offence of burglary at the assizes should have resulted in a capital sentence, following which a reprieve for transportation may or may not have been recommended. However, 33.4 per cent of men convicted of burglary at the assizes were capitally convicted of which

two-thirds had their sentence commuted for transportation. At the same time, while 27.8 per cent of women convicted of burglary were capitally sentenced, all had their sentence commuted to transportation or other order (Table 6.7).

Table 6.7: Sentencing for burglary, Yorkshire, 1735-1775. [90]

	Convcitions	Capital sentence only	%	Commuted to Trransportation	%	Transportation	%	Fine	%	Whipped/Branding	%	Gaol/House of Correction	%	Total %
Quarter Sessiona														
M	**16**	0	**0.0**	0	**0.0**	0	**0.0**	11	**68.8**	4	**25.0**	1	**6.3**	100.0
F	**0**	0	**0.0**	0	**0.0**	0	**0.0**	0	**0.0**	0	**0.0**	0	**0.0**	0.0
Assizes														
M	**93**	10	**10.8**	21	**22.6**	48	**51.6**	6	**6.5**	2	**2.2**	6	**6.5**	100.0
F	**18**	0	**0.0**	5	**27.8**	13	**72.2**	0	**0.0**	0	**0.0**	0	**0.0**	100.0

Of those defendants convicted of breaking and entering or simple larceny at the assizes, 51.6 per cent of men and 72.2 per cent of women were sentenced directly to transportation. A further 15.2 per cent of men convicted of one of the lesser offences arising out of burglary at the Yorkshire Assizes were given lower sentences involving various combinations of whipping, branding, fines and/or gaol, which were not applied to female convicts for similar offences. Although the remission of all capital sentences of women convicted for burglary was not an insignificant exercise of mercy, beyond that the evidence points to exercise of gendered discretion by sentencing judges when only male convicts in burglary/breaking and entering benefited from a further act of mercy when the sentence was reduced to a fine or whipping.

[90] Collated from extant records of known outcomes for Yorkshire described in the introduction for the periods 1735-1745 and 1765-1775, see pp. 11-20.

The seriousness of the offence of burglary meant that forthcoming motherhood only acted to save a female convict from a capital sentence; it did not act to reduce the period of transportation, as in the case of the aforementioned Naomi Hollings whose capital sentence was commuted to transportation for fourteen years, following the birth of her child.[91] Any time spent in gaol from the time she was convicted to the time she was transported would not have served to reduce the period of transportation. Mary Ormand was singled out from her co-accused when she was convicted of burglary and sentenced to death by hanging.[92] Ormand (on her own confession) had stolen a significant amount of clothing which she intended to sell for profit. Not only did she break into a house but she left and re-entered it on at least three occasions, taking wine or clothing as she desired and further abused the sanctity of the home by remaining there on a number of nights, thus bringing her offence within the higher level of seriousness of burglary during the night. The fact that Sir William Lowther M.P. was the victim may explain why the investigation into the offence was particularly thorough and the jury failed to extend mercy by awarding a partial verdict to exclude the capital element of burglary. In contrast, her co-accused benefited from the allowance extended to accomplices who turned evidence against a co-defendant.[93] Ultimately Ormand was reprieved and sentenced to transportation for seven years following a recommendation for mercy by the trial judge.[94] Why Justice Thomson made that recommendation is not clear and the State Papers do not say whether Sir William Lowther influenced that decision, one way or the other. Nevertheless, gender was not necessarily the motivating factor behind the extension of mercy in this particular case as Ormand was not the only person to be reprieved at that assize session where the capital

[91] See p. 151; TNA E 403/3107/40, TNA ASSI 41/3, Crown minutes, York City, March 1739; TNA SP44/83/328-329; York Courant, 27 March 1739; Leeds Mercury and York Courant, 29 July 1740.
[92] See pp. 43, 252.
[93] 4 Geo. I, c.11 (1718).
[94] TNA ASSI 41/2/119, assizes, city of York, March 1735.

conviction of Jonathan Leetham for the theft of a horse was also remitted on an order for transportation for fourteen years.[95]

Conclusion (theft)

Although the majority of crimes against property created by common law and statute applied equally to men and women, gendered differences are evident in the types of crimes they committed, conviction rates and sentences imposed. Defendants of either gender charged with theft were prey to the effects of rewards available to 'thief-takers' and rules concerning the evidence of accomplice. Despite legislative changes allowing for the harsher sentences of men and women convicted of receiving stolen goods, the number of men and women charged with receiving stolen goods by either court was never very high in comparison to the number of thefts alleged, partly because of procedures whereby accomplices might escape prosecution where they 'turned king's evidence'.

Despite previous observations, that grand and petty juries might lack empathy with those who committed crimes against property,[96] both men and women in Yorkshire benefited from the frequent application of the powers of both grand and petty juries to extend 'mercy', as they contrived to keep a large number of capital larcenies within the jurisdiction of the lower court by understating the value of goods stolen or making a finding for theft from a house rather than burglary, as stated in the indictment.[97] Therefore higher conviction rates of either gender at quarter sessions are not necessarily an accurate measure of either severity or leniency. The higher percentage of women than men accused of the theft of money and other valuables in both courts (Tables 6.1 and 6.2) runs contrary

[95] TNA ASSI 45/20/1 ff. 50-55, depositions and recognizances; TNA ASSI 41/2 ff. 120, gaol delivery, county of York, 11 March 1735. Although Leetham's case was heard at the assizes for the county of York and Ormand's trial was at the assizes for the city of York, the same justices sat for both sessions.
[96] See p. 86.
[97] Beattie, J.M. (1977) 'Crime and the Courts in Surrey 1736-1753', in J.S. Cockburn (ed), Crime in England 1550-1800, London: Methuen & Co Ltd, pp. 155-186, p. 177.

to the argument of the undervaluing of goods stolen by women and the alignment of female thefts and domestic goods. Nevertheless, it is arguable that the high percentage of men and women who benefitted from a partial verdict for theft at the assizes can be interpreted as evidence of leniency towards both sexes in the higher court, where a capital sentence might apply (Table 6.6).

It is possible to gauge attitudes in the each of the courts when at least one-third of men and women were acquitted of all allegations of theft during the periods surveyed, which perhaps is greater evidence of frustration with the 'Bloody Code', than to do with leniency. However, men tended to fare better in that respect at quarter sessions and women at the assizes (Table 6.4) so that the convictions of women appearing on lesser charges at quarter sessions in Yorkshire during the eighteenth century had more in common with the more severe treatment of women identified in Walker's sixteenth- and seventeenth- century Cheshire,[98] while responses to women charged with more serious thefts at the assizes were more in line with the higher acquittal of women found in MacKay's eighteenth-century London. Overall, the outcomes provide evidence of different gendered responses at different points of the judicial process.[99]

There is evidence that sentencing justices on the Northern Circuit required greater evidence of criminality in female offenders when a greater percentage of women than men ordered for transportation had been accused of committing more than one offence of theft. At the same time, where the threat of a capital sentence was removed at the assizes, the evidence from Yorkshire is that a greater percentage of women than men convicted of theft were punished by way of transportation. In the lower court the outcomes were reversed when a greater percentage of men than women were ordered for transportation. While a

[98] Walker, Crime, Gender and Social Order, p. 178.
[99] Palk, Gender, Crime and Judicial Discretion, p. 155.

greater percentage of women than men were ordered to be corporally punished, a small but greater percentage of men than women were punished by way of a fine, reflecting gendered differences in financial independence (Table 6.7).

Gendered attitudes in the treatment of men and women indicted for the more serious offence of burglary appear to have altered at each stage of the prosecution process. The proportion of burglaries attributed to male offenders was higher than that of women yet there was a greater tendency for quarter session justices to transfer bills accusing a woman of burglary to the higher court. Once at the assizes, pious juries consistently mitigated the harshness of the law of burglary through the use of partial verdicts and acquittals, where one-third of all men and women were acquitted of burglary/breaking and entering and found guilty of a lesser offence (Table 6.6). Following a conviction for the capital offence, women tended to fare better than their male counterparts when every woman capitally convicted of burglary was reprieved for transportation, while a judge's recommendation for mercy was extended to only one third of men similarly convicted (Table 6.7). In accordance with Gattrell's observations on the gendered leniency towards women convicted of a capital offence, the evidence was, and continued to be, of reluctance by the judiciary to allow a woman to hang.[100]

For reasons considered previously in this thesis, the authority to transport felons was not universally available until the Act of 1718, while the introduction of a statutory sentence of transportation for fourteen years for those convicted of receiving stolen goods removed some of the discretionary powers of the sentencing judge.[101] As a result, transportation does not feature in the sentencing practices described by Walker in the courts of seventeenth-century Cheshire and a direct comparison of sentencing policies with

[100] Gatrell, 'Chivalry and the female victim', pp. 334-347.
[101] See pp. 6, 13-14.

eighteenth-century Yorkshire is not possible. For other reasons, the conditions of transportation changed between 1775 and 1780 and government policies on the use of gaols altered significantly, so that sentencing policies contained in gendered studies post 1780 are not directly comparable to the period pre-1775.[102] Sentencing outcomes between 1718 and 1775 are unique and, therefore, further analyses of decision-making in other counties across the same time-frame would enhance our understanding of judicial attitudes to capital offending in the mid-eighteenth century.

[102] See pp. 31-327.

Chapter 7: Gendered Participation in the Food Riots of Yorkshire, 1740

There are two ways of raising mobs. One by hiring, another by provoking.[1]

On 6 May 1740, the York Courant reported on a lively procession of members of the textile industry in York who paraded through the city in celebration of the new manufacturing industry in the area.[2] The following article in the same newspaper contained a report of a series of violent riots that took place during the course of the previous week in the area around Dewsbury, West Yorkshire, in which the greater number of participants were drawn from the textile industry, causing damage to granaries, mills and their contents. The phrase 'bread and circuses' (*panem et circenses*) springs to mind, but as a metaphor for appeasement in the West Riding of Yorkshire local politicians missed an opportunity through the assize of bread and controlling exports to assure the local populace that bread would be both affordable and available. The events reported illustrate the concerns that would have been felt at local and national level when it appeared that working people had lost faith in the senior members of the community to carry out their civic duties. This chapter examines contrasting responses to the riots in Yorkshire as evidence of the understanding of hierarchal roles and responses of all parties when that broke down. It considers the background to the riots; the roles played by men and women who participated in the riots; the failure to charge all but a few men and even fewer women with any offence arising out of the riots; and responses in the criminal courts to the few men and women who were finally brought before the courts.

Literary review (riot)

Early twentieth-century historians were of the opinion that food riots appeared to be more or less alike and that any detailed study "would involve labour disproportionate to the

[1] Burke, Edmund (1771).
[2] York Courant, 6 May 1740.

value of any generalisations that would be likely to emerge".[3] However, by looking at each riot individually it is possible to identify common themes that emerge, examine exceptional circumstances and consider the responses to such events by those with political and judicial authority. Although food riots did occur in rural areas, the main rioters were not agricultural workers, but industrial workers and artisans who were at the mercy of emerging agrarian capitalism.[4] The advantage of a local study is that is allows for the closer examination of attitudes to collective protests in response to specific grievances and allows others to compare the outcomes with those in other regions, at different times and concerning particular complaints. Historians in the mid-twentieth century advanced the opinion that food riots were an expression of popular pressure by working men to convey their grievances in a form of collective bargaining, while at the same time following specific 'rites' and 'conventions'.[5] E. P. Thompson developed the argument further when he advanced the notion of a 'moral economy', in which economic crises caused both men and women of the labouring classes to take direct action in order to exercise their rights to basic food items, namely grain, at a reasonable price and those notions of basic rights "found some support in the paternalistic tradition of the authorities".[6] However, as Charlsworth observed, collective protest was not limited to food riots and at different times were also directed at grievances over land, labour, poor law, tithes, turnpikes and militia recruitment.[7] In each instance, popular riots reveal the act of riot to be an ultimate weapon used only when other means to force local or national government to perform its duty had been exhausted.

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[3] Barnes, D.G. (1930) A History of the English Corn Laws, 1660-1846, London: Routledge, preface, p. xiv. See also, Ashton, T.S., and J. Sykes (1929) The Coal Industry of the Eighteenth Century, Manchester: Manchester University Press, p. 126; Rose, R.B. (1961) 'Eighteenth century price riots and public policy in England' in International Review of Social History, 6, part 2, pp. 277-292 at p. 278.

[4] Charlesworth, A. (editor) (1983) An Atlas of Rural Protest in Britain 1548-1900, London & Canberra: Croom Helm Ltd, pp. 1-2.

[5] Hobsbawn, Eric (1952) 'The Machine Breakers', in Past and Present, vol. 1, pp. 57-70, p. 59. And see, Rudé, G. (2005, first published 1964) The crowd in history. A study of popular disturbances in France and England, 1730-1848, London: Serif, p. 238.

[6] Thompson, E.P. (1971) 'The Moral Economy of the English Crowd in the Eighteenth Century', Past and Present, vol. 50, pp. 76-136, p. 79.

[7] Charlesworth, An Atlas of Rural Protest, p. 1.

Thompson observed that while men took the leading role in most types of protest, women were prominent participants in a narrower range of protests such as food riots.[8] Shoemaker explained the participation of women in food riots (as opposed to other economic-led disturbances) on the basis that female concerns tended to focus on local and domestic issues rather than national issues.[9] Walker rationalizes female presence in food riots on the basis that men and women tended to operate within networks they understood: whereas men might strike for higher wages or steal commercial goods to sell on, women might engage in food riots or steal domestic goods when prices were beyond their small household budgets.[10] Likewise, Olwen Hufton interpreted female presence at riots occurring in the market place as an inevitable extension of her role as the purchaser of bread and grain. In that environment women had control of the family purse and were sensitive to changes in the price and quality of grain.[11] Other studies of popular riots tend to concentrate on the cause of riots, rather than examining the outcome for those identified as having participated in them. There are also several detailed studies of contemporary food riots during the spring of 1740 in the north-eastern counties around Newcastle and Stockton where rioters were largely drawn from the coal and shipping industries.[12] This chapter takes that discussion further and considers the rationale of decisions made at

[8] Thompson, 'The Moral Economy', pp. 115-116; Shoemaker, R.B. (1998) Gender in English Society 1650-1850, London and New York: Longman, p. 234; O'Gorman, F. (1997) The Long Eighteenth Century: British Political & Social History 1688-1832, London: Arnold, pp. 122-123; Hufton, Olwen (1996) The Prospect Before Her: A History of Women in Western Europe, vol. 1, 1500-1800, New York: Alfred A. Knopf, chapter 12, 'The Woman Rioter or the Riotous Woman?'; Rule, J. (1992) Albion's People, English Society 1714-1815, Harlow, Essex: Longman Group Ltd, p. 200; Stevenson, J. (1992, second edition) Popular disturbances in England, 1700-1870, London: Longman, pp. 101-102.

[9] Shoemaker, Gender in English Society, pp. 233-237.

[10] Walker, Garthine (1994) 'Women, theft and the world of stolen goods', in Kermode, J. and G. Walker (editors), Women, Crime and the Courts In Early Modern England, London: UCL Press Limited, pp. 81- 105, pp. 89-90.

[11] Hufton, The Prospect Before Her, p. 472.

[12] Ellis, J. (1980) 'Urban Conflict and Popular Violence: the Guildhall Riots of 1740 in Newcastle-upon-Tyne', International Review of Social History, vol. 25 (3), pp. 332-349; Morgan, Gwenda and Peter Rushton (1998) Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718-1820, Florence, KY, USA: Routledge, chapter 9, pp. 185-206, 'Law and Disorder'.

various stages of the judicial decision-making process, it also considers the evidential issues.

Background (riot)

Two consecutive harsh winters in 1739 and 1740 resulted in the failure of the harvests in the following spring, while sheep and cattle were lost through a combination of the elements and starvation.[13] Concerns about high prices and scarcity of grain were felt more strongly in the pastoral areas of the northern and western parts of the country than in the wheat producing areas of the east and south coasts.[14] The effect of food shortages was most acute in the emerging industrial towns where the population were increasingly dependent on the market place for its food. The regions of England which had established a thriving cloth industry tended not to be self-sufficient in food production and the majority of men indicted for their part in the food riots of 1740 in Yorkshire were described as cloth workers. Prices of wheat, rye and oats increased by almost 100 per cent during the first six months of 1740 and the response of cloth works through the riots of 1740 mirrors a similar response by cloth workers observed during food riots in the seventeenth century.[15]

England had a long history of governmental regulation of the internal trade in corn dating back to 1552 (and probably earlier) and merchants convicted under the statute faced up to two months imprisonment for a first offence, or longer for repeat offending.[16] The Corn Laws were introduced to regulate the export of corn from the country and at certain

[13] Whiting, C.E. (editor) (1952) 'Two Yorkshire diaries: the Diary of Arthur Jessop and Ralph Ward's Journal', Yorkshire Archaeological Society, Record Series, vol. 117, Harrogate, pp. 37, 51; for references to the severe weather conditions; York Courant, 6 November 1739; York Courant, 8 January 1740; Leeds Mercury, 5 February 1740.

[14] Barnes, A History of the English Corn Laws, pp. 12-13; Rudé, The crowd, p. 37.

[15] Ashton, T.S. (1959) Economic fluctuations in England, 1700-1800, Oxford: Clarendon Press, pp. 19, 146; Underdown David (1985) Revel, Riot and Rebellion: Popular Politics and Culture in England, 1603-1660, Oxford: Oxford University Press, pp. 116-117.

[16] 5 and 6 Edw., VI c.14 (1552), An Act against Regrators, Forestallers and Engrossers, in which 'forestalling' and 'regrating' involved the buying of corn, cattle or other merchandise in one market, with a view to selling it in another with a view to making a profit; while 'engrossing' concerned the acquisition of large quantities of corn or other victuals with a view to gaining a monopoly in the marketplace.

times actually prohibited its export. A more laissez-faire approach followed the Restoration, as a result of which, an Act of 1670 permitted the export of corn whatever the price in the home market.[17] Nevertheless, the freedom to export grain was not absolute and an embargo could be placed on the transportation of corn in bad seasons.[18] However, governmental intervention happened only in extreme conditions, at which times the laissez-faire attitudes clashed with established notions of government intervention at a national level thorough trade embargos and at a local level through the assize of bread.[19]

Parliament introduced an embargo on food exports in December 1739 and pressure was put on them to continue the restriction on the export of certain food products beyond the spring of 1740. In May 1740 the embargo on exports was lifted, probably in response to the demands of merchants, but as English merchants were once again free to maximise the opportunities for profits in the European markets it exacerbated the situation caused by the poor harvests at home.[20] Doubtless as a direct result of the outbreak of food riots in the northern counties during the spring of 1740, on 26 June 1740 the Privy Council restated the law regarding the price of corn and the licensing powers of magistrates to control those prices through an assize of bread.[21] Nonetheless, the Government was slow to respond in any meaningful way and it was not until November 1740, when it became apparent that

[17] 22 & 23 Ca. II, c.12 (1670/1671) An Act for ascertaining the Measure of Corn and Salt.
[18] Hoskins, W.G., 'Harvest Fluctuation, 1620-1759', www.bahs.org.uk/AGHR/ARTICLES/16n1a2.pdf, accessed 6 August 2012, pp. 21-23.
[19] 51 Hen. III (1266–1267) The Assize of Bread and Ale regulated the price, weight and quality of bread and beer manufactured and sold in England and Wales. See also, Thompson, 'The Moral Economy', p. 83; Stevenson, J. (1985) 'The moral economy of the English Crowd. Myth and reality', in Order and Disorder in early modern England, Fletcher, A., & J. Stevenson (editors) Cambridge: Cambridge University Press, pp. 218-238, pp. 227-230.
[20] TNA SP 36/50 f. 460, 29 May1740, Minutes of a meeting of the Lords Justices, requesting that the Attorney General and Solicitor General undertake an immediate review of the laws relating the export of corn; Ashton, Economic fluctuations, p. 146.
[21] TNA SP 36/51 f. 183-186, 26 June 1740, Orders of Council to prevent the illegal export of corn.

enemy forces in Europe were benefitting from the export of English grain, that an embargo was placed on the export of corn, grain and other food products.[22]

Enforcement of the Assize of Bread differed across the country and by the eighteenth century it often fell into abeyance until times of crisis when the terms of the statutes would be revived. Although market conventions and trading laws might be ignored in times of plenty, when prices were rising the "paternalistic model" required magistrates, as representatives of the ruling elite, to ensure that the trading laws were revived and enforced, even if only for "symbolic effect".[23] The decision to hold an assize of bread and setting the price, size, and quality of a loaf of bread was a discretionary power exercised by local magistrates who, in time of scarcity, had to balance the needs of the general population against those of the merchants, millers and bakers.[24] In attempting to force local magistrates to set maximum prices or grain merchants to impose fixed prices on the market, public discontent often took the form of direct action against those transporting grain to markets outside the area or simple looting from corn mills.[25]

It has been suggested that, by negotiating terms with merchants on grain prices or placing an embargo on the export of grain, magistrates were, to some extent, sanctioning the riotous actions of the crowd.[26] An alternative interpretation is that in negotiating with

[22] Refers to the War of Austrian Succession (1740-1748); TNA SP 36/53 f. 146, 18 November 1740, King's speech to Parliament; TNA SP 36/53 f. 181, 26 November 1740, order for an embargo on corn, grain, starch, rice, beef, pork and any other provisions of victuals to be exported to foreign parts, encacted by 14 Geo. II, c.3 (1740) An Act to prohibit the exportation of Corn, Grain etc.; Rose, 'Eighteenth century price riots', p. 290.
[23] Thompson, 'The Moral Economy', p. 88.
[24] Stevenson, 'The moral economy', pp. 227-230.
[25] Rose, 'Eighteenth century price riots', p. 279; Malcolmson, R.W. (1983) '1740', in Charlesworth, A. (ed.), An Atlas of Rural Protest in Britain 1548-1900, London & Canberra: Croom Helm t, pp. 83, 245-246; Thompson, E.P. (1991) Customs in Common, London: The Merlin Press pp. 245-246; Underdown, Revel, Riot and Rebellion, p. 116; Ellis, 'Urban Conflict', p. 337; Morgan and Rushton, Rogues, Thieves, pp. 189-191.
[26] Wells, R. (1988) Wretched Faces, Famine in Wartime England, 1763-1803, Gloucester: Alan Sutton, New York: St Martin's Press, pp. 79-80; Dickinson, H. T. (1994) Politics of the people in eighteenth-century Britain, London: Macmillan, pp. 137, 154.

merchants in setting a fair price for grain, magistrates were doing no more than they were obliged to in law when calling an Assize of Bread, although by convention, negotiations to settle the price of grain should have taken place at a much earlier stage. There is no record for the West Riding to suggest that an assize of bread was held either regularly or at least in the spring of 1740. Therefore, when negotiations between Sir John Kaye M.P. and rioters in Dewsbury broke down, the mob went to a mill at Thornhill and took grain by force.[27] The rioters reportedly left a sum of money which represented, in their opinion, a 'fair price' for the grain stolen.[28] Whether or not the price determined was a fair one or an undervalued one is unknown but their decisive actions were a display of *charivari* where the actions of the rioters in setting their price for grain mimicked the powers they expected from the magistracy.

While food riots erupted at Yarm in the North Riding of Yorkshire and Dewsbury in the West Riding, there were no reports of food riots in the East Riding of Yorkshire.[29] It may be no coincidence that quarter session records for Hull in the East Riding state that an assize of bread was held an as a matter of course each quarter session in Hull throughout the period 1735-1745.[30] The same records reveal that during the midsummer sessions for 1740, recognizances were issued against fourteen men of the region, variously described as gentlemen, yeomen and merchants, ordering them to keep to the terms of their licences as badgers (buyers of corn or grain).[31] At the same sessions a certificate was issued by the

[27] There were two men by the name Sir John Lister Kaye, bart., one was M.P. for the City of York from 1734 and the other, his son, was a justice of the peace for the county at the time of the 1740 riot and later became High Sheriff of Yorkshire. Both men were involved in bringing the riots of 1740 to a conclusion. See, Stately Homes of the United Kingdom of Great Britain, Historical notes about Denby Grange, http://www.british-towns.net/sh/statelyhomes_album.asp?GetPic=74, accessed 28 August 2012.
[28] TNA ASSI 45/21/4 f. 91, 20 June 1740, information of John Furnis, millman.
[29] See Appendices 7.1, 7.2 and 7.3 for maps of the Ridings.
[30] ERY Hull, CCQA/2/2-3.
[31] ERRO QSF/129/C/7-10, quarter sessions for the East Riding of Yorkshire, Midsummer 1740, recognizances to keep the terms of licences as badgers.

grand jury stating the price of six types of grain.[32] It seems that justices for the East Riding were far more aware of local concerns over the price of grain than in other parts of the county and the provocation that might be aroused by the sight of grain being transported. Unlike their neighbours, they anticipated problems relating to food prices and access to staple food items in the market places of the largely industrial areas around Hull. In contrast, no similar entries appear in the sessions papers for the West Riding until August 1740, following which fourteen cases were brought between August and October that year for buying and selling corn or grain without licence, all of which resulted in guilty verdicts. At the same time, while eighteen trading matters were brought before the Justice for the North Riding between April and October 1740, only six convictions followed during the September and October sessions.[33] In a paternalistic society, magistrates would have been expected to act as intermediaries between their social peers who were engaged in commercial enterprises and the expectations of the masses who demanded that grain be made available in the market place at a fair price, even when they held the same views as other members of their class.

Criminal offences and riot

Even in the good years there were reports of mobs plundering corn dealers or attempting to prevent the export of grain.[34] The Corn Exportation Act of 1737 imposed heavy penalties on those who used violence towards a person buying grain, or who attempted to prevent the transportation of 'wheat, flour, meal, malt or other grain' by stopping or seizing a wagon *en route* to a market or seaport.[35] Offences under the Act were triable before the quarter sessions and punishable by a combination of imprisonment for

[32] ERRO QSF/129/D/4, quarter sessions for the East Riding of Yorkshire, Midsummer 1740, certificate of the prices of corn.
[33] Atkinson, Rev., J.C. (1890) North Riding of the County of Yorkshire, vol. 8, London: The North Riding Society, p. 232
[34] Thompson, 'The Moral Economy', p. 83; Barnes, A History of the English Corn Laws, p. 1.
[35] 11 Geo., II, c.22 (1737) 'An Act for punishing such persons as shall do injuries and violence to the persons or properties of His Majestey's subjects with intent to hinder the Exportation of corn.'

between one and three months with hard labour and a public whipping. A second similar offence was deemed a felony and punishable by transportation for seven years. Under procedures more commonly applied to highway robbery, the Act also provided that damages might be recovered from the hundred in which the offence was committed, allowing the person suffering loss to sue the hundred for any losses up to a maximum of £100. If the complainant could identify the culprits they were required to enter into a recognizance to prosecute them and, even where a complainant could not identify the offenders, the victim was able to claim against the hundred for the loss. The Act of 1737 further created a specific offence of theft from a granary or other vessel, or the destruction of a granary or its contents, defining it as a felony punishable by transportation for seven years.

There were a number of offences which might be committed by participants in the course of a riot, in particular: common law and statutory riot; arson; trespass; burglary; common law theft and statutory theft under the Corn Laws; and assault. The laws relating to theft, burglary and assault have been described in the forgoing chapter but there were particular problems for complainants attempting to draft an indictment for theft arising out of a riot. The law required the victim to establish that the accused dishonestly took the goods and acquired physical possession of them but in the aftermath of a riot it would have been difficult to establish who took the grain, if the goods were not found in the possession of the accused or there was no evidence to establish that they had passed the goods stolen to a third person.[36]

Arson was not a feature of the riots in Yorkshire and any other damage to property was a common law offence, for which a remedy might be obtained through a civil action

[36] Baker, J.H. (2007, fourth edition, first published 1971) An Introduction to English Legal History, Oxford: Oxford University Press, pp. 533-535.

for trespass to goods or property. The offence of riot took two forms and the main differences between the common law offence of 'participation in a riot' and the capital offence of 'riotous assembly' was the size of the gathering, the intention of the crowd and the punishment that might follow. The common law provided that a riot occurred when three or more people gathered together with the intent of committing an unlawful act and then set out to commit it.[37] Participation in a riot was classified as a misdemeanour punishable by a fine, the pillory or whipping.[38] The common law also recognised the offence of a 'rout', which arose in the same circumstances as a common law riot; except that there was no requirement to establish that the crowd went on to commit any subsequent offence.[39] It is likely that a rout was distinguished by the dispersal of the crowd, once they felt that their 'voice' had been heard, and as such, it was also classified as a misdemeanour. The Riot Act 1715 did not displace the common law offence but introduced additional provisions whereby, when groups of twelve or more were riotously assembled, a magistrate was required to read out the proclamation to disperse following which, if the mob failed to disband within one hour, the participants would be in breach of a capital offence, without benefit of clergy.[40] Magistrates tended to interpret the Act as restricting their authority to proceed against any rioters until the hour had passed.[41] While indictments in Yorkshire for participation in the food riots are couched in terms of 'riotous assembly', it appears from the sentences that followed the few convictions secured that charges were brought for the common law misdemeanour rather than the statutory capital offence. Alternatively, it is possible that petty juries were reluctant to convict for the capital offence and found those accused guilty only of the common law offences of riot or

[37] Shoemaker, R.B. (July 1987) 'The London 'Mob' in the Early Eighteenth Century', The Journal of British Studies, vol. 26, Chicago: The University of Chicago Press, pp. 273-304 at pp. 280-281, n. 26.
[38] Dickinson, Politics of the people, pp. 128, 148; Morgan and Rushton, Rogues, Thieves, p. 188.
[39] Shoemaker, 'The London 'Mob', pp. 280-281, n. 26.
[40] 1 Geo. I c.5 (1715) 'An Act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters whereas of late many rebellious riots and tumults have been in divers parts of the Kingdom, to the disturbance of the public peace, and the endangering of His Majesties person and government and the same are yet continued and fomented by persons disaffected to His Majesty'.
[41] Hayter, Tony (1978) The Army and the Crowd in Mid-Georgian England, London: Macmillan, pp. 9-14; Stevenson, Popular disturbances, pp. 6-7; Morgan and Rushton, Rogues, Thieves, p. 188.

rout, particularly when it was difficult to establish which individual committed any subsequent offence.

In addition to the problems in distinguishing the various forms of riot and rout, the legal situation in England and Wales was further confused on the point as to whether the law offered any special protection to women involved in riot.[42] Dalton's practice directions for justices of the peace published in 1705, is unclear and his first statement on female gatherings in a public place appears to exempt women from any legal proceedings. "If a number of women (or children under the age of discretion) do flock together for their own cause, this is no assembly punishable by these statutes, unless a man of discretion moved them to assemble for the doing of some unlawful act".[43] He continued by noting certain exceptions to this rule which allowed a woman to be indicted in her own right for riot:

> … if a woman covert shall commit a riot, or do any trespass or other wrong, she is punishable for it; and for a trespass done by the wife … the action lieth against both the husband and wife … but if a woman covert without her husband be indicted in trespass, riot, or any other wrong, there the wife shall answer, and be party to the judgement only; and in such case the fine set upon the wife shall not be levied against the husband.[44]

Dalton's directions appear to be that justices might ignore 'spontaneous' female activity as opposed to those which appeared to be planned.[45]

Although Hufton maintained that Blackstone's commentaries are "insistent that the right to riot was not guaranteed to women",[46] contemporary opinion was not so clear cut.

[42] Walter, John (1980) 'Grain riots and popular attitudes to the law: Maldon and the crisis of 1629', John Brewer and John Styles (editors) An ungovernable people: the English and their law in the seventeenth and eighteenth centuries, London: Hutchinson, pp. 47-84, p. 63.
[43] Dalton, Michael (1705) The country justice: containing the practice of the justices of the peace out of their sessions, London: William Rawlins and Samuel Roycroft, p. 325.
[44] Dalton, The country justice, p. 325
[45] Hufton, The Prospect Before Her, p. 469.

In 1807, Southey declared that, "women are far more likely to be mutinous; they stand less in fear of the law, partly from ignorance, partly because they presume upon the privilege of their sex, and therefore in all public tumults they are foremost in violence and ferocity".[47] Therefore, there may well have been an erroneous belief generally held by laymen, lawyers and magistrates alike, that a woman could participate in riot without being legally pursued at law.[48] A belief in their immunity from prosecution may have given female protestors the confidence to be visibly active for those causes dear to them and where they participated in vocal (as opposed to physical) assaults they would be open only to prosecution for a rout.

Food riots (Dewsbury)

Table 7.1 below sets out the events occurring in the area around Dewsbury in the West Riding of Yorkshire over a three day period based on various eye witness accounts reported to the Secretary of State, the description of events set out in deposition statements taken by local magistrates and newspaper reports at the time.[49] It demonstrates an intense weekend of unrest in the area, and indicates the estimated number of men and women participating in the riots at various stages and describes subsequent proceedings at the assizes.[50] What becomes clear from Table 7.1 and reports of events set out below is that both male and female representation in the court records is greatly understated.

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[46] Hufton, The Prospect Before Her, p. 469, n. 14.
[47] Thompson, 'The Moral Economy', p. 116, citing Southey (1814 edition) Letters from England, London, p. 47.
[48] Stevenson, Popular disturbances, p. 102.
[49] Dewsbury is situated in the West Riding of Yorkshire, 5 miles from Wakefield, 8 miles from Huddersfield and Leeds and 33 miles from York. The riots are also mentioned in the diary of local apothecary, Arthur Jessop: Whiting, 'Two Yorkshire diaries', p. 51.
[50] See Appendix 7.3, map of the West Riding.

Table 7.1: Events and outcomes during the Food Riots at Dewsbury [51]

Date	Location[52]	Estimated Crowd Size	Charges arising	M	F
26 April, 5am	On the road, Dewsbury.	400 men and women		0	0
27 April	Dewsbury Mill.	400 men and women		0	0
27 April, 6am	John Furnis' mill, Thornhill.	About 100	Riotous assembly	1	0
27 April, 4pm	Dewsbury.	400 men and women	Riotous assembly	6	0
27 April	Sir George Savill's mill, Thornhill.	About 100	Theft	1	0
27 April, 5pm	Thomas Greenwood's, Dewsbury.	A great number	Theft	20	3
27 April, 5pm	Thomas Greenwood's, Dewsbury.	A great number	Riotous assembly	17	8
27 April, 5pm	Thomas Greenwood's, Dewsbury.	A great number	Assault	1	3
27 April, 6pm	Thomas Redfearn's mill.		Riotous assembly	1	0
27 April, 6pm	William Redfearn's mill.		Riotous assembly	4	0
27 April	Sir John Kaye's house.	400 men and women		0	0
28 April	Sir John Kaye's house.	About 1,000	Riotous assembly	2	0
28 April	High Hoyland	Less than 1,000		0	0
28 April	Sandal	Less than 1,000		0	0
28 April	William Wood's mill, Crigglestone.	200 plus	Theft	5	0
29 April	John Furniss' mill, Thornhill.	A large number	Riotous assembly	10[53]	1
29 April	John Furniss' mill, Thornhill.	A large number	Theft	1	0
29 April	John Furniss' mill, Thornhill.	A large number	Breaking and entering	2	0
29 April	Dewsbury and Thornhill.		Riotous assembly	13	0
29 April	Wakefield attempting to release prisoners.	Several hundreds	Riotous assembly	5	0
Total				**89**	**15**

[51] TNA SP 36/50 ff. 349-352, 30 April 1740, report of Sir John Kaye J.P., Sir Rowland Winn and others of Wakefield to Lord Newcastle concerning riots in Dewsbury; York Courant, 6 May 1740, report on the riots in Dewsbury; TNA SP 36/50 ff. 425-432. Report to Sec of State of riots in Stockton, May 1740; TNA ASSI 41/3, Crown minutes, York, July 1740; TNA ASSI 41/3, Crown minutes, York, July 1740; NRY QS, North Allerton QSM/104 f. 165; NRY QS, Guisbrough, 15 July 1740; Leeds Mercury and York Courant 29 July to 6 August 1740.

[52] See Appendix 7.3, map of the West Riding.

[53] Indictments for these offences were brought at quarter sessions while the remainder were referred to the assizes.

On the morning of Saturday 26 April 1740 about 400 men and women assembled at Dewsbury in order to prevent the export of corn to Lancaster. The owner of the corn, having had notice of the proposed attack, filled sacks with bran which was taken by a carrier in place of the corn. Rioters attacked the cart and the contents of the sacks were thrown onto the highway. In the meantime, the doors of the mill had been secured to prevent the rioters from breaking in and causing further damage. The mob were reported to have spent the night in woods near Dewsbury and on the following day succeeded in pulling down Dewsbury Mill and threw as much corn as they could not carry into the river.[54] Those actions were counter-productive and against the 'rules' of the moral economy and go to illustrate the strength of feeling when one party failed to follow those rules.

From Dewsbury, the rioters proceeded to Thornhill where another mill was destroyed and grain stolen or otherwise ruined.[55] The same day the mob assembled at Sir George Savill's mill where they forcibly entered the premises, damaged property and stole or destroyed wheat flour and sacks of beans.[56] The rioters were eventually intercepted by Sir Samuel Armitage, High Sheriff of the County, Sir John Kaye, M.P. and their servants.[57] They warned the rioters of the consequences of their actions and the Proclamation was read out which resulted in stones being thrown at Armitage and Kaye, although, within the prescribed hour the group dispersed. Kaye invited five representatives of the protesters to meet with him and other justices of the peace for the county on the following day in order that they might air their complaints.[58] Although nothing is reported on the point, it may be that the purpose of meeting with some of the justices was to consider holding an Assize of Bread, as Sir John Kaye J.P.'s report to the Secretary of State expressed the view that he

[54] TNA SP 36/50 ff. 349-352, report of Sir John Kaye J.P.
[55] TNA SP 36/50 ff. 349-352, report of Sir John Kaye J.P.
[56] TNA ASSI 45/21/4/94, 6 May 1740, the information of William Redfearn, tenant of Sir George Savill.
[57] Leeds Mercury, 29 April – 6 May 1740.
[58] TNA SP 36/50 ff. 349-352, report of Sir John Kaye J.P.

and other officials in Wakefield believed that the riots occurred in protest against the meal and flour produced in Yorkshire being sold in Lancashire; thus inflating prices and causing hardship to the poor.[59]

On 28 April a crowd of about 1,000 gathered at the house of the two Sir John Kaye's but left soon afterwards to continue their weekend of riot and destruction. No discussions were reported but it is possible that some justices refused to negotiate with the rioters under duress. Instead, Armitage and Mr Barton J.P. sent a request to General Burrill's regiment in York for assistance in suppressing the riot. In the meantime, rioters proceeded to High Hoyland where they broke into a mill and either stole or destroyed the grain stored there. From there they went to break into a house in Sandal and destroyed a bolting mill. Their activities that day concluded at Criggleston (in Sandal) when they were met by the local mill owner who carried a gun, so that he managed to detain five of the rioters and deliver them to the magistrates in Wakefield.

On the following morning, a large crowd gathered where the prisoners were held and the 'Proclamation' to disperse was read again. By 2 p.m. the crowd had increased, as a consequence of which eleven men were taken by a magistrate. At about the same time attacks on other properties in the area were still taking place, including a second incident at John Furniss' mill in Thornhill, where a mob demanded grain at a lower price than on offer, following which they damaged and stole a quantity of wheat flour.[60] At 4 p.m. on the afternoon of 29 April a force of 100 militia men arrived in Dewsbury, by which time the local authorities had managed to bring the riot to an end. Nevertheless, the troops were requested to remain in Wakefield for some time longer and called on to escort nineteen

[59] TNA SP 36/50 ff. 349-352, report of Sir John Kaye J.P.
[60] TNA ASSI 45/21/4/91, 20 June 1740, the information of John Furnis, millman.

rioters to York Castle (although the records for the following assizes contains a report of only seventeen prisoners returned by the gaol).[61]

Six men from Carlton near Leeds (all described as labourers) were charged with riotous assembly when they appeared at the quarter sessions at Skipton in July 1740, being the first sessions for the West Riding immediately following the riots. The bills against each of them were dismissed by the grand jury.[62] One year after the riots took place, Joseph Goldthorpe of Mirfield, labourer; John Robinson the younger of Soothill (in Dewsbury), clothier; John Townsend of Ossett (in Dewsbury), clothier, and Joseph Hepworth of Ossett, butcher, appeared at the quarter sessions for Pontefract in April 1741. The charges were that on 29 April 1740 they did riotously assemble with "sticks, staves and other offensive weapons" at Dewsbury, Sandal and Thornhill with upwards of 200 others, that they broke and destroyed John Furniss's mill in Thornhill, William Redfearn's mill in Thornhill, assaulted Joseph Pollard and generally terrorized all three men.[63] The defendant Hepworth was noted as having been acquitted of the charges at an earlier hearing at Wakefield but that he had since died. The others 'submitted' to the court and Townsend, at least, was ordered to pay a fine.[64] Complaints against other men and women involved in the same incidents were presented to the assizes with only marginally more success.

[61] York Courant, 13 May 1740; TNA ASSI 44/55.
[62] WRY QS4/29 116-118, Skipton, 15 July 1740.
[63] WRY QS4/29 153-158, Pontefract, 7 April 1741: note that submitted to Wakefield 1741 but respited to Pontefract sessions.
[64] Burn, Richard (1755) Justice of the Peace and Parish Officer, vol. 1, London, p. 214; Langbein, John H. (2005, first published 2003) The Origins of Adversary Criminal Trial, Oxford: Oxford University Press, pp. 218-223.

Table 7.2: Grand Jury York, July 1740 [65]

Sir John Lister Kaye of Denby Grange bart.,[M.P.], Thomas Fairfax of Newton, esq., William Simpson of Stainford, esq., Henry Beaumont of Whitley, esq., William Spencer of Cannon Hall, esq., William Wrightson of Cusworth, esq., Richard Norton of Holroyd, esq., John Twistleton of Rawcliffe, esq.,[J.P.], Thomas Frankes of Farnely esq; Richardson Farrand of Harden Beck, esq., Richard Richardson junior of Bierley, esq., Henry Atkinson of Caley, esq., William Vavasour of Weston, esq., John Blackett of Newby, esq., Francis Swales of Aldbrough, esq., Timothy Stern of Bradford, esq., Henry Brown of Skelbrough, esq., Metcalf Proctor of Thorp on the Hill, esq., William Scott of Lumm, esq., Ralph Elmsall of Thornhill, esq., Christopher Ascough of Kirby Ralzard, esq., Matthew Wilson of Asleton, esq., and John Hammerton of Hellifeld Peel esq.

The assizes following the riots at Dewsbury were held at York Castle on Monday 1st July 1740 before Thomas Parker esq., Justice of the Court of Common Pleas and James Reynolds esq., Baron of the Court of Exchequer.[66] The grand jury comprised twenty-two men of the county, headed by Sir John Kaye M.P. (Table 7.2). The minute books for Yorkshire do not record the profession of the individual members of petty juries (Table 7.3), although, it is probable that many petty jurors for the county assizes in York were drawn from yeomen employed in industries associated with the wool trade.[67] By participating in a riot, each rioter ran the risk that jury members might be biased against them if their businesses, or that of their friends and family, had been adversely affected by the actions of the crowd or, indeed been amongst them. For those reasons, three names stand out: firstly, the grand juror, Sir John Kaye, M.P. as the father of Sir John Kaye, J.P; secondly, in a small community the petty juror William Lister may have been related to mill owner, John Lister; similarly, the petty juror, George Fisher, may have been related to defendant William Fisher (Tables 7.3 and 4).

[65] TNA ASSI 44/55, Gaol Delivery York July 1740.
[66] TNA ASSI 44/55, Gaol Delivery York July 1740.
[67] Green, T.A. (1988) 'A Retrospective on the Criminal Trial Jury, 1200-1800', in Cockburn, J.S. and T.A. Green (editors) Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800, Princeton: Princeton University Press, pp. 358-402.

Table 7.3: Jurymen, York, July 1740.

Edward Clarkson, William Lister, David Midgeley, Thomas Crow, John Elison, Thomas Birdsall, Thomas Huby, Lawrence Harrison, George Heaston, Thomas Marshall, George Fisher, Francis Goodrick.

Table 7.4: Prisoners brought from the gaol, York, July 1740.

Men and women of Dewsbury:

1. George Parker, cloth maker
2. Samuel Parker, cloth maker
3. Robert Conyer, cloth maker
4. John Webster, cloth maker
5. Martha Awtey, spinster
6. Thomas Secker, clothier
7. Ann Earnshaw, spinster
8. Grace Askwith, wife of Benjamin Askwith, labourer
9. William Nussey, blacksmith
10. Joseph Mitchell, cloth maker
11. Peter Whitworth, husbandman
12. William Fisher, cloth maker
13. Matthew Fenton, carpenter
14. Joshua Awtey, cloth maker
15. Joseph Thomas, cloth maker

Men from Robert Town in Birstall

16. Richard Swallow, cloth maker
17. John Jackson, cloth maker.

Fourteen men and three women were brought from the gaol to answer the charges against them at the assizes, fifteen of whom were from Dewsbury and two from neighbouring Robert Town (Table 7.4 above). Two female prisoners were described only as spinsters and another as the wife of a labourer. The majority of male prisoners were employed as cloth makers, while William Nussey gave his employment as blacksmith,

Peter Whitworth as husbandman and Matthew Fenton as a carpenter.[68] The two charges against these defendants were that on 27 April 1740 at Dewsbury they stole, firstly, thirty-four linen sacks (£2); fifty bushels of wheat flour (£13); eighteen bushels wheat meal (£15); sixty-four bushels wheat bran (£2), all belonging to Benjamin Speight. The second charge concerned the theft of fifty-one linen sacks,(£4); sixty bushels wheat flour (£15); four bushels oatmeal (£1); 128 bushels wheat bran (£4); and three lead weights (£1), the property of John Wilson.[69]

The bills against two men and the three female defendants were 'not found' by the grand jury and they would have been released from the court, although they would have spent at least two months in gaol pending that decision. Indictments against the remaining twelve men for felony and robbery were found and following their pleas of 'not guilty' they were put to trial before the petty jury named in Table 7.3.[70] Eight men were found guilty of theft and, following an enquiry into their personal wealth, it was determined that none of them had any goods, chattels, land or tenements, that is, there was no goods that might become forfeit to cover the costs of proceedings and each was sentenced to transportation for seven years.

The records set out in Table 7.5 below represent various incidents of theft, riot, assault and breaking and entering referred to the assizes and arising out of the riots of 1740. Certain names appear more often than others in the witness statements, possibly because they were better known (or more notorious) in the community, so that some individuals account for more than one entry on the database. The ninety-four entries incorporated in Table 7.5 are made up of thirty-five men and twelve women accused of one or more

[68] TNA ASSI 44/55, Gaol Delivery York July 1740.
[69] TNA ASSI 44/55, Gaol Delivery York July 1740.
[70] TNA ASSI 44/55, Gaol Delivery York July 1740.

offences, so that the twenty convictions recorded in Table 7.5 represent only fourteen male rioters, which raises the actual percentage of convicted men to 40.0 per cent (14 of 35). Nussey was cited as being concerned in seven different incidents arising out of the riots, the highest number of charges against any one rioter. The charges against him included three incidents of riot at the mills belonging to William Redfearn, Thomas Greenwood and John Lister; two incidents of theft from Sir George Savill and John Wilson; and one indictment for breaking into a house at Thornhill, putting Joseph Pollard in fear and theft.[71] Nussey was discharged for want of prosecution on the first two charges of riot, acquitted of housebreaking and convicted of the theft from Wilson, for which he was ordered to transportation for seven years, most probably under the provisions of the Corn Act.[72]

Table 7.5: Conviction rates at the assizes arising out of food riots in Dewsbury.

Assizes	**Total**	**Discharged for want of prosecution**	**%**	**Guilty**	**%**	**Not guilty**	**%**	**Unknown**	**%**	
	94									
M	**79**	20	25.3	20	25.3	15	19.0	24	30.4	100.0
F	**15**	8	53.3	0	0.0	0	0.0	7	46.7	100.0

William Nussey and Matthew Fenton were singled out as having been "very active" in the destruction of a mill at Thornhill, while Elizabeth Bennett who was seen pulling slates off the roof of a house in order to allow male rioters to enter the premises and steal grain is absent from the court records.[73] The failure to name other rioters might be because their roles were less prominent or because they could not be identified and, therefore, prosecuted. For example, witnesses were only able to identify Elizabeth Bennett by her surname which suggests that she was not commonly known. However, as neither Nussey

[71] TNA ASSI 45/21/4, 91-92, 95; TNA SP 36/50 349-352 ; TNA SP 36/53/116.
[72] TNA ASSI 41/3, Crown minutes, York, 24 July 1740; TNA ASSI 44/55, Indictment files, Northern Circuit, York, July 1740.
[73] TNA ASSI 45/21/4/92, 20 June 1740, the information of William Furnis.

nor Fenton were employed in the cloth trade as were the majority of other rioters, it is possible that they were singled out as agitators who encouraged others to riot.

Food riots (Yarm).

At about the same time as the food riots broke out in Dewsbury, similar protests were taking place in other parts of the county and in neighbouring Newcastle and Stockton.[74] Yarm is a market town in the North Riding, situated only four miles from Stockton and forty-three miles from York.[75] Rioting broke out in Yarm at the end of May 1740, at the same time as rioting occurred in Stockton. The High Sheriff of Durham, Sir William Williamson, sent a report on disturbances in Yarm to the Secretary of State noting that rioters in Yarm had been joined by men from the neighbouring towns in Durham.[76] Following those disturbances, ten people were arrested, although only two men and four women were charged at quarter sessions with riotous assembly.

All six defendants appeared at the quarter sessions in Guisborough and appear to have been convicted of common law riot.[77] Three married women were sentenced to varying periods of imprisonment in the house of correction: one for one month, the second for three months and the third for two months with a 5s. fine. The fourth woman appears to have been unmarried and she was sentenced to three months imprisonment with a £1 fine. One man was fined £5 and ordered to six months in prison, while the other male defendant enlisted in the navy rather than stand trial.[78] Clearly, the way that participation in a riot was defined might have an important effect on the punishment meted out as male defendants received the harshest sentences and the single woman more stringent penalties than her

[74] Morgan and Rushton, Rogues, Thieves, pp. 189-191; Ellis, 'Urban Conflict', pp. 332-349.
[75] See Appendix 7.1, map of the North Riding.
[76] TNA SP 36/50 ff. 425-432. Report to Sec of State of riots in Stockton, May 1740.
[77] NRY QS, North Allerton QSM/104 f. 165; NRY QS, Guisbrough, 15 July 1740.
[78] NRY QS, North Allerton QSM/104 f. 165; NRY QS, Guisbrough, 15 July 1740; Leeds Mercury and York Courant 29 July to 6 August 1740.

married counterpart, providing some evidence of gendered discrimination in the sentencing options exercised by the presiding justices.

Three questions arise out of the matters considered so far: firstly, why were so few men or women charged with any offence arising out of the riots, given the numbers alleged to have been involved? Secondly, why were so few women named in the indictments? Lastly, why did so many indictments fail against the few men and women selected for prosecution and in all charges laid against female rioters participating in the Dewsbury riots? There are a number of reasons that, either individually or collectively, might explain the relatively low number of men and women charged with offences arising out of the riots. If food riots were community actions, it should come as no surprise to find reluctance by witnesses to name co-rioters. While there is no direct evidence that co-rioters identified other participants in the Dewsbury riots, the fact that the names of a handful of rioters appear more often than other rioters who are mentioned only once, or not at all, indicates that either those individuals were very well known in the community and easily identifiable and/or that they were identified as ringleaders.

The selection of a few as an example to many was common practice in riots. Seventeen years later, a riot broke out in Pocklington in the East Riding, sparked off by the Militia Act 1757, under which men of all classes might have their name drawn by ballot to join the militia, although the high price of corn was also identified as a cause of unrest in the town.[79] Riots in the East Riding involved about 1,500 rioters, although only eighty rioters were taken to York Assizes, of which forty received short term imprisonment and four were sentenced to death, although only one actually hanged. There were of course practical problems in arresting a large number of people, as witnessed in Wakefield on the

[79] Neave, David (1971) Pocklington 1660-1914: a small East Riding market town, Beverley, p. 20; Neave, David (1996)'Anti-Militia Riots: 1757' in Neave, Susan and Stephen Ellis**,** An Historical Atlas of East Yorkshire, Hull: University of Hull Press, pp. 124-125.

last day of the riots and the social elite may have been concerned about the possible repercussions amongst the local community if too many were dealt with too harshly.

Female rioters

It was not necessarily the case that only a few women were charged with participation in the riots when taken as a percentage of all individuals referred to either court. Alan Booth observed that in food riots, where the sexual composition was recorded, women were both numerous and particularly active.[80] If there was a particular reason specifically to note female presence it might have been the case that, even if women were fewer in number, they were recorded in greater proportion because their behaviour crossed the boundaries expected of a woman. Looking back at Table 7.5, the fifteen charges brought against twelve individual women at the assizes represents 25.5 per cent of the forty-seven individuals referred to the assizes following the Dewsbury riots. Records for the earlier assizes set out in Table 3.1 demonstrate that women made up an average of 17.0 per cent of all defendants in the higher court. Therefore, it might be argued that a higher than average number of women were indicted for their role in the Dewsbury riots. While the six cases of riot at Skipton quarter sessions concerned only male rioters, riots in Yarm resulted in 66.7 per cent of indictments being found against female rioters, at a time when female defendants represented an average of 19.5 per cent of all defendants (Table 2.1), although the problem with this type of speculative reasoning is the large percentage of unknown outcomes in Table 7.5.

The question, therefore, should be why did all indictments of women at the assizes fail? The failure to convict women was not due to any lack of commitment to secure a conviction. As with a number of male rioters, three women brought before the assizes at

[80] Booth, A. (1977) 'Food Riots in the North West of England 1790-1801', Past and Present, No. 77, pp. 84-107, pp. 98-99.

York were charged with multiple offences, so that if they were acquitted on one charge they may be convicted on another relating to their activity in the riots. Recognizances were taken from John Sykes and Moses Newsom, to prefer an indictment against Grace Askwith, Ann Earnshaw and Martha Awtey for breaking into the mill and stealing wheat flour.[81] The three women were indicted on the count of theft of corn, while Awtey was further indicted for riot at Greenwood's mill. There is no obvious reason why the bill against Awtey for riot was discharged or why the charges for theft against the three women did not proceed to trial, unless the bills were rejected by the grand jury.

Evidence of *coverture* may be found if female rioters were protected by their male counterparts and encouraged to cause physical damage to property or carry out verbal threats, leaving the men to undertake those offences which might attract a higher sentence. Awtey, Earnshaw and Askwith were identified as having threatened the life of John Sykes, such that he had to leave the area for some time.[82] Shoemaker similarly observed that women were more likely to engage in fierce rhetoric than actual physical violence[83] and it is no surprise that Sykes did not prosecute his complaint against any of the women, although he may have been satisfied that they had been punished by their detention in gaol for two months on other charges. Deposition statements identified Awtey as the woman who climbed on the roof of Greenwood's mill, removed slates from the roof and thereby entered the property, from which wheat flour was stolen. As in the case of the aforementioned Elizabeth Bennett, there may have been some dispute as to whether she both broke and entered the premises or merely caused criminal damage, in which case a civil trespass to property may have been settled by a private arrangement.[84]

[81] TNA ASSI 44/55 recognizance of John Sykes and Moses Newsom of £40 each, to prefer bill of indictment and give evidence.
[82] TNA ASSI 45/21/4/93, 20, June 1740, the information of Moses Newsom, clothier.
[83]Shoemaker, Gender in English Society, pp. 237-238.
[84] See p. 301.

In an examination of grain riots in early seventeenth-century Essex, John Walter observed that women led the riots,[85] although, in the debate on female leadership *versus* female presence, John Bohstedt claimed to have demolished "the myth of the feminine food riot" when he concluded that 'women typically joined men' in riot, rather than the reverse, reflecting their role as partners to the male bread-winners in household economies.[86] However, as in Walter's study of Essex, Askwith, Awtey, Earnshaw and Bennett appear to have been independent women who played key roles in the riots. Only Grace Askwith was married, although no mention is made of her husband Benjamin Askwith in either the deposition records, reports to the secretary of state, or the records of assize.[87] While the impetus to direct action by married rioters might vary from couple to couple it should not be assumed that a wife would not initiate their involvement.

Charivari and riot

A number of historians describe evidence of '*charivari*' or carnival to symbolize the invocation of social norms by those in authority, although, Bohstedt took that as providing further evidence linking hearth and market-place, rather than a form of political protest.[88] Shoemaker referred to the banging of pots and pans, the presence of children and other symbolic rituals, while Natalie Zemon Davis and Olwen Hufton observed how the tradition of '*charivari*' to mock those in authority was mirrored in the symbolism of rioters.[89] In the case of food riots, historians such as John Walter might have interpreted the behaviour of the rioters who left payment for the grain stolen as a "conscious mimicry of administrative

[85] Walter, 'Grain riots', p. 53.
[86] Bohstedt, J. (1988) 'Gender, Household and Community Politics: Women in British Riots, 1790-1810', Past and Present, No. 120, pp. 88-122, see pp. 89-90.
[87] TNA ASSI 45/21/4/95; TNA ASSI 44/55
[88] Bohstedt, 'Gender, Household and Community Politics', p. 101.
[89] Shoemaker, Gender in English Society, p. 234; Davis, Natalie Zemon (1975) Society and Culture in Early Modern France, London: Duckworth, pp. 100-103 and 150; and see Dean, S. (1989) 'Crowds, Community and Ritual in the work of E.P Thompson and Natalie Davis', in Hunt, L. (editor) The New Cultural History, Berkeley, Los Angeles, London: University of California Press, pp 47-91; Hufton, The Prospect Before Her, pp. 464-466.

practice", whereby they confronted those in authority with its failings in calling an assize of bread.[90]

By the eighteenth century many popular rituals and customs, enjoyed in previous centuries in England by all classes, came to be regarded as 'vulgar' by the elite and survived only in the activities of the common masses. Nevertheless, as Martin Ingram explained, despite the cultural divisions between the social classes the meaning expressed in areas of common culture such as *charivari* would have been understood by all ranks of society.[91] In Dewsbury, the initial outbreak of rioting began with a crowd of about 400 people who assembled, "having a drum peal before them; carrying a sort of ensign or colours".[92] The following day, a crowd of about 1,000 gathered 'by beat of drum' and "with Uzza's & beat of Drum" [sic] commenced a weekend of riot and destruction.[93] Two days later, following the arrest of the ringleaders, "several hundreds with beat of drum" were reported to have advanced through Wakefield in their attempt to release prisoners.[94] The food riots as *charivaris* embody a shared concept by the crowd and the 'subtlety' of their symbols would not have been lost on those in authority. The problem was that what began as a ceremonial demonstration might easily develop into a more violent form of action when peaceful demonstrations failed to secure a remedy for the local grievance.

In other forms, *charivari* might serve a quasi-legal purpose, operating outside the law to punish behaviour disapproved of by the community. A common example of the 'penal' role of *charivari* was the public condemnation of a cuckold when a husband fell short of

[90] Walter, 'Grain riots', p. 81; Walter, John (2001) 'Public transcripts, popular agency and the politics of subsistence in early modern England', in Braddick, Michael J. and John Walter (editors) Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland, Cambridge: Cambridge University Press, pp. 123-148, p. 148.
[91] Ingram, I. (November, 1984) 'Ridings, Rough Music and the 'Reform of Popular Culture' in Early Modern England', Past & Present, No. 105, pp. 79-113, p. 79.
[92] TNA SP 36/50 f. 349, report of Sir John Kaye J.P.
[93] TNA SP 36/50 f. 349, report of Sir John Kaye J.P.
[94] TNA SP 36/50 ff. 349-352, 30 April 1740, report of Sir John Kaye J.P.; York Courant, 6 May 1740, report on the riots in Dewsbury.

the patriarchal ideal.[95] Overtones of cuckoldry, or at least the failure of a man to live up to society's ideal of the patriarch, are evident in the description of events during the riots in Dewsbury when William Fisher was portrayed as the hen-pecked husband in his unsuccessful petition for mercy from transportation. Fisher's petition included an assertion that he only became involved when forced out of his home by his wife and "compelled by her" and some others to assist in stealing grain.[96] Hufton explained female behaviour in urging a man to take action and calling him idle or cowardly as a means by which she could shame him into action, not to assert power over him, but to ensure he provided for his family.[97] In times of dearth many ordinary, law abiding, men may have fallen short in their role as provider for the family. In such circumstances, in responding to the 'demands' of his wife a man may have been less likely to be condemned by his neighbours for showing weakness.

Why did so many indictments fail?

Walter concluded that those in authority could afford to temper any rigorous enforcement of the law, as long as they were able to secure the convictions of a few as an example to other rioters and demonstrate judicial action taken to protect the propertied class.[98] Responsibility for a prosecution ultimately lay with the individual who suffered harm but that is not say that justices of the peace were not able to influence those decisions when deciding who should be bound by recognizances to prosecute, based on their knowledge from having witnessed the riots and the information gleaned when taking deposition statements or framing reports for the Secretary of State. Otherwise, minor assaults, trespasses to property and criminal damage were matters that might be settled privately outside the court structure or under civil actions for trespass. Charges for 'pure'

[95] Ingram, 'Ridings, Rough Music', pp. 97, 101.
[96] TNA SP 36/53 f. 36, 7 October 1740, a petition from inhabitants of Wakefield in support of William Fisher.
[97] Hufton, The Prospect Before Her, pp. 476-477.
[98] Walter, 'Grain riots', p. 77; Walter, 'Public transcripts', p. 148.

riots lay with local government officers concerned with matters of unrest in the area and only when riots were associated with larceny might they delegate those responsibilities and require mill owners and the like to enter into recognizances to prosecute. In June 1740 recognizances of £40 each were taken from at least six men to prosecute various individuals concerned in the riots and from other prosecution witnesses.[99] However, subpoenaed witnesses such Joshua Wilson, a clothier and John Walker, a tailor, had no concern in the business of the mills attacked and were likely to be reluctant witnesses if called to give evidence against their colleagues, possibly at great personal risk.

It would not have taken a petty jury enquiry to inform the court that the men and women accused of rioting and theft were unlikely to have any personal resources from which any significant compensation might be retrieved. That, and fear of reprisals, might explain why labourer, Robert Wooler, failed to answer his recognizance to prosecute three men and seven women for riotous assembly at Dewsbury and a further charge of assault on Wooler by John Olroyd.[100] From the point of examining the gendered outcome of criminal trials that case was significant in that it concerned a majority of female activists. Unfortunately, because of Wooler's failure to prosecute, what verdicts a petty jury might have passed can only be guessed at. It is of course always possible that Wooler's failure to appear arose from intimidation or bribery by the husbands and fathers of the women he accused, if not from the women themselves.

John Furniss was ordered to enter into a recognizance to prosecute and give evidence against William Nussy and Elizabeth Bennett for breaking and entering his mill and the theft of wheat and other food items,[101] although two other men, Mathew Fenton and John

[99] TNA ASSI 44/55, Gaol Delivery York July 1740.
[100] TNA ASSI 44/55, Gaol Delivery York July 1740, recognizance of Robert Wooler, 20 June, 1740.
[101] TNA ASSI 44/55, Gaol Delivery York July 1740, recognizance of John Furniss, 20 June, 1740.

Wolfenden were also identified in the deposition statements as having been active in the attack upon his mill.[102] Nussy was successfully indicted for breaking into a house at Thornhill, putting a man in fear and the theft of a great quantity of wheat flour, while Fenton was indicted for the theft. At their trials, Nussey and Fenton were acquitted by the petty jury. It is not clear whether Wolfenden stood trial for theft in this instance or whether the bill against Bennett for riot (by pulling slates off the roof of the mill) went any further than a hearing before a grand jury or dealt with under civil powers as a trespass to property. The trials of Nussey and Fenton may have failed if there were insufficient evidence of their having broken into the mill or that the grain stolen belonged to Furniss, he being the mill owner rather than the grain merchant. Nevertheless, Furniss may have expected more support from the jury, given that he was a miller (rather than a merchant) and employed in a traditional occupation in the community.[103]

Joseph Pollard was bound to prosecute and give evidence against Jonathan Wilby, John Pickersgill, Peter Whitworth and William Oates for riotous assembly at Criggleston, for breaking and entering a barn and the theft of wheat belonging to Pollard.[104] The men arrested at Criggleston Mill on April 28 were those who continued to riot after the crowd began to diminish and when those in authority were better able to intervene. They were not necessarily those who instigated that particular event, although each man faced two or more charges for separate incidents during the riots.[105] Pollard, in fact, brought charges against five men, the four named in the recognizance and a fifth man, Francis Saxton, for the theft of wheat flour, valued at £6. At the subsequent assize hearings, Saxton and Oates were acquitted and the three remaining defendants were convicted of theft. Pickersgill and Wilby were sentenced to one year in prison and fined 6s 8d, while Whitworth was

[102] TNA ASSI 45/21/4/91, information concerning a riot at Criggleston.
[103] Thompson, 'The Moral Economy', p. 83.
[104] TNA ASSI 44/55, Gaol Delivery York July 1740, recognizance of Joseph Pollard, 20 June, 1740.
[105]TNA SP 36/50 ff. 349-352, 30 April 1740, report of Sir John Kaye J.P.; York Courant, 6 May 1740, report on the riots in Dewsbury.

sentenced to seven years transportation.[106] Whitworth was one of the rioters singled out for particular attention. He had been charged with four separate incidents arising out of the riots, two counts of thefts and two counts of riot relating to events at Criggleston and at Thomas Greenwood's property; the higher sentence reflects that fact.

William Taylor was bound to prosecute and give evidence against Mathew Fenton for riotous assembly, entering a mill at Bretton and the theft of wheat.[107] Fenton was committed to gaol but there is no indication that he stood trial on that account or that Taylor forfeited his recognizance. Although it is possible that the bill was rejected by the grand jury, alternatively, if Taylor's case was called on after Fenton was convicted of the theft from Greenwood (for which he was sentenced to be transported), it is possible that he was not tried on the four further charges against him.

William Redfearn and John Walker were bound to prosecute and give evidence against Mathew Fenton, William Nussy, Isaac Hunt and John Ashton for breaking and entering a mill, riotous assembly, entering a mill at Bretton and theft of wheat from both mills.[108] Redfearn was a witness to the attack on Sir George Saville's mill, and destruction of the grain stored inside.[109] The claims against Fenton and Nussy were discharged for that offence, either by the grand jury, or because they had been successfully convicted on other charges. There is no indication of the outcome of Hunt and Ashton but, as they were not charged with any other offences, it is possible that the bills against them were rejected by the grand jury.

[106] TNA ASSI 41/3, Crown minutes, York, July 1740; TNA ASSI 44/55, Indictment files, Northern Circuit, York, July 1740.
[107] TNA ASSI 44/55, Gaol Delivery York July 1740, recognizance of William Taylor, 20 June, 1740.
[108] TNA ASSI 44/55, Gaol Delivery York July 1740, recognizance of William Redfearn and John Walker, 20 June, 1740.
[109] TNA ASSI 45/21/4/94, 6 May 1740, the information of William Redfearn, tenant of Sir George Savill.

As referred to above, the main trial at the Yorkshire Assizes in July 1740 was for offences arising out of the incident at Thomas Greenwood's mill, where the mill was broken into and wheat flour belonging to Messrs Speight and Wilson was stolen.[110] The indictment that followed was issued in respect of fourteen men and three women, of which eight men were found guilty of theft and sentenced to transportation for seven years.[111] A separate complaint identified four men as having been involved in another incident arising out of the same event, which resulted in the conviction of David Brearley for the theft of corn and meal and Richard Swallow for breaking into Greenwood's mill and stealing wheat flour belonging to Speight and Wilson. Both men were sentenced to transportation for seven years.[112]

The final indictment concerned the prosecution for riot of William Rouse, William Swallow, Joshua Awtey, and Richard Gasse for their attempt to release Wilbey, Oates, Pickersgill, and Whitworth from custody, following their seizure for riot at Criggleston.[113] That indictment is dated 2 August 1742, more than two years after the riots, and represents a final attempt to bring a few more men to account than achieved at earlier hearings. Rouse and Swallow were convicted and sentenced to one year in prison and a fine of 6s 8d each, while Awtey and Gasse were acquitted.

The overall outcome of the assizes was that five men received some form of punishment by way of fine or gaol and ten men (66.7 per cent of those convicted) were ordered to be transported for seven years. No one was capitally convicted for statutory riot and all claims against female rioters failed. Unusually, four men petitioned for mercy from the orders for transportation, when petitions for mercy were more commonly seen for

[110] See p. 300; TNA ASSI 45/21/4/95, 20 June 1740, the information of Thomas Wilson, clothier.
[111] See p. 300; TNA ASSI 45/21/4/95, information; TNA ASSI 44/55, Gaol Delivery York July 1740.
[112] TNA ASSI 41/3, Crown minutes, York, July 1740; TNA ASSI 44/55, Indictment files, Northern Circuit, York, July 1740.
[113] TNA ASSI 44/57, indictment, 2 August 1742.

appeals from a capital sentence. In those circumstances it is possible that their participation in communal protest indicates a deeper commitment to community and greater support for their plight amongst neighbours who supported the same cause. A private petition was presented on behalf of William Fisher, upon which the secretary of state sought the opinion of the presiding judge, Judge Reynolds. Fisher's petitioners described the riot as having been "occasioned by the scarcity & high price of corn", and they explained Fisher's involvement as being the result of the influence exerted over him by his wife. To some extent Fisher was guilty of transgressing social norms at two levels: firstly, by committing an act of theft and, secondly, by responding to the demands of his wife, in contradiction of his conscience.

> He was no promoter nor a Ringleader … being himself (at the time the Riot was committed) at home & quiet in his own house, till forced out of the same by his wife & compelled by her & some other evil disposed persons to go & assist in carrying off the meal.[114]

Although Reynolds confirmed this interpretation of events, Fisher's good character had no effect and Reynolds advised against a reduction in the sentence, despite evidence that Fisher was sixty-seven years old, in ill health and that until the riot, he had been an "honest, diligent, sober, inoffensive man and in every respect a person of an unblemished character".[115] Reynolds acknowledged that the only evidence against Fisher was that he was seen at the mill holding a bag which his wife filled with meal, although it was Fisher who then carried the bag away.[116] Even though Fisher might in other circumstances have escaped with a lesser punishment, Reynolds was of the opinion that all the men convicted

[114] TNA SP 36/53 f. 36, 7 October 1740, petition.
[115] TNA SP 36/53 f. 36, 7 October 1740, petition.
[116] TNA SP 36/53 f. 93, 21 October 1740, report from James Reynolds on the petition on behalf of William Fisher.

for their part in the Dewsbury riots should be transported for seven years, by way of example to others.[117]

> The said Fisher might have been burnt in the hand and then discharged, But considering that great Disturbances had happened in the Northern as well as other parts of the Kingdom On the Account or under the pretence of the High Price of Corn. I though[t] it might be proper, for the sake of Example, to order Him and eight other persons convicted upon the same indictment to be all Transported.[118]

In those circumstances, Fisher's pardon was refused and he and five other men were transported to America. Three other convicts also petitioned for mercy from transportation and the petition of William Nussey, Joshua Awty and Matthew Fenton was supported by twenty-six signatories, stating that they had been "drawn into it thro' surprize, fear of scarcity of corn and ignorance of the Law".[119] Nevertheless, Reynolds' response was similarly unrelenting and the three men were subsequently transported.[120]

Restraint and the Moral Economy

Given that the food riot was not a new phenomenon at this period or in this region, it is possible that those participating in food riots were sufficiently informed of legal practices so as to act only in such a way as might minimise the risks of their facing subsequent legal proceedings. Rioters, who were merely 'verbal' in their threats to people or property, may have been guilty of the lesser offence of a rout rather than a riot. Potential rioters were probably aware of the considerably lighter penalties that might follow should they cause

[117] TNA SP 36/53 f. 93, 21 October 1740, report.
[118] TNA SP 36/53 f. 93, 21 October 1740, report.
[119] TNA SP 36/53 f. 116-117, 10 November 1740, Petition of William Nussey, Joshua Awty and Matthew Fenton, convicted for stealing corn at the time of the riots in Dewsbury and report of James Reynolds on the petition recommending transportation; TNA SP 36/53 f. 144, 17 November 1740, Memorial from various persons to Lord Newcastle for the release of Matthew Fenton, Joshua Awty and William Nussey.
[120] TNA SP 36/53 f. 116-117, 10 November 1740, Petition of William Nussey, Joshua Awty and Matthew Fenton, convicted for stealing corn at the time of the riots in Dewsbury and report of James Reynolds on the petition recommending transportation.

damage to a mill or granary, as opposed to committing arson. It is also possible that elements of breaking and entering were 'stage-managed', while complaints of damage to property were dealt with by magistrates under their civil powers regarding trespass to property.

Some historians explain occurrences of direct action taken by ordinary men and women, as providing an opportunity to voice their grievances publicly and a means by which those with no political franchise might obtain immediate satisfaction and influence local authorities to evoke the long established measures against hoarders etc.[121] If riots were an expression of dissatisfaction with national and/or local policies, then the response to unrest by those in authority would have a significant impact on their ability to maintain civil order. A fine line therefore needed to be drawn between responding to civil disorder and aggravating a potentially explosive situation.

Reading the Riot Act did nothing to assist in the arrest of those involved, as magistrates tended to consider that their authority to proceed against rioters was restricted until one hour had passed. During the hour of grace, the greater part of the crowd was likely to have dispersed, as at Crigglestone, and those arrested at the end of a riot were not necessarily representative of those who were there at the beginning.[122] For this reason, in assessing the presence and role of female rioters, witness testimonies are particularly important as they contain references to named participants and describe their part in the disturbances, even though they might not necessarily appear in the subsequent quarter session and assize records. The hour also gave the rioters time to think about the consequences of their action if they did not disperse. Dispersing was not necessarily a show of weakness or failure on the part of the rioters: they had made their point. In order to

[121] O'Gorman, The Long Eighteenth Century, p. 121; Shoemaker, Gender in English Society, p. 233.
[122] Hufton, The Prospect Before Her, pp. 48, 472.

maintain order in the community, the authorities would be expected to recognise the seriousness of the occasion and take some action to remedy the crowd's legitimate grievances. In the case of food riots, that took the form of reaching a settlement with the local grain merchants. In the spirit of *charivari*, it would seem that the merchants of Dewsbury failed to follow the rules of the game which must have had an impact on the attitude of those in authority when dealing with the consequences.

Magistrates were hampered in arresting more than a few by the sheer numbers of rioters, although more could be identified later for their arrest and prosecution. Shoemaker supports the view that magistrates were more inclined to disperse the mob than seek retribution, while Rushton and Morgan are of the opinion that local magistracy were primarily interested in the conviction and punishment of the ringleaders.[123] The latter view is supported by the evidence of Fisher's petition for mercy which made the point that he was not one of the ringleaders.[124] However, the two points are not necessarily at odds with each other. The magistrates might want to disperse the crowd (without acknowledging the strength of their grievances) but the law had been broken and a scapegoat had to be found. The result was that relatively few rioters were arrested for any offence arising out of their participation in the disturbances of 1740 (Table 7.5 above). Even those who were subsequently tried and convicted escaped the severest punishments under the Riot Act.

Responses to food riots were likely to reflect local perceptions of the state of the food supply. E.P. Thompson's 'moral economy' encompassed three basic elements: pure food; honestly measured; at a fair price (with preference shown to local markets). Food riots were, therefore, a symptom of the conflicts between traditional values and aggressive

[123] Shoemaker, 'The London 'Mob' pp. 281-282; Morgan and Rushton, Rogues, Thieves, p. 203.
[124] See p. 313-314.

commercialism and, as such, were a matter of national concern.[125] Rioters in Dewsbury claimed that the export of grain from the region "much inhanced the price of corn here to the oppression of the poor".[126] In Yarm they declared that they were prepared to "dye before any corn shall be exported and for that they had better be killed or hanged than starved".[127] The food riots of 1740 were not merely to do with the fear of food shortages, but genuine shortages caused by severe weather conditions and reinforced by newspaper reports of those conditions. In January 1740 the York Courant carried a report that Sir John Kaye, M.P. had ordered 40 guineas be paid to the Lord Mayor for distribution to the poor householders of the city who were not ordinarily beneficiaries of the poor rate.[128] In February 1740, the same paper carried a report that Charles Pelham, the M.P. for Beverley, had provided four large oxen and £10 worth of bread to the poor house-keepers of the town, to be "distributed amongst the most necessitious, without regard to their being freemen or otherwise".[129]

The food riots of 1740 initially subscribe to Thompson's moral economy argument. They have been described as acts of community solidarity in which various sections of that community might sanction those actions in a number of ways or, as Thompson described it, the "legitimizing notion" of the crowd.[130]

> By the notion of legitimation I mean that the men and the women in the crowd were informed by the belief that they were defending traditional rights or customs; and, in general, that they were supported by the wider consensus of the community.[131]

[125] Thompson, 'The Moral Economy', pp. 78-79; Dickinson, Politics of the people, p. 137.
[126] TNA SP 36/50 f. 349, report of Sir John Kaye J.P., to Lord Newcastle concerning riots in Dewsbury.
[127] TNA SP 36/50 f. 425-432, 26 May 1740, report from Sir William Williamson to the Bishop of Durham.
[128] York Courant, 29 January 1740, p.3.
[129] York Courant, 26 February 1740, p.3.
[130] Dickinson, Politics of the people, p. 135.
[131] Thompson, 'The Moral Economy', p. 78.

In allowing emotions to run too high before tackling the corn merchants on price, the crowd became sufficiently charged to respond with force. Failure of the Justices to call an assize of bread allowed the rioters of Dewsbury to take action which they felt able to justify and which may have aroused some sympathy amongst members of the community who sat on the petty juries.

Local officials may have felt thwarted by the self-serving actions of corn merchants which made their task in maintaining order far more difficult. Equally, justices of the peace may have felt frustrated by the legal process in restricting their powers to proceed against protestors or bring about stiffer penalties as a warning to others. Legal authority had long been was vested in any two magistrates acting with the sheriff, or undersheriff, to call a *posse comitatus* to suppress any riot,[132] assembly or rout, arrest the rioters and make a record of the nature and circumstances of the disturbance.[133] In Dewsbury, the actions of Sir John Kaye M.P were not described in terms of a *posse comitatus* but on the first occasion of rioting he intercepted the mob and attempted to disperse them with the assistance of Armitage and their servants. He stood before the crowd, warned them of the consequences of their actions and the proclamation to disperse was read out as required under the Riot Act of 1715.[134] Although the mob responded by throwing stones at Kaye and Armitage, Kaye tried to defuse the situation by inviting representatives of the protesters to meet with him and other justices to air their complaints. When the incidents of rioting began to escalate it was Armitage, as the High Sheriff, supported by Barton J.P., who sent a request for militia forces to assist them.

[132] See glossary.
[133] 13 Hen. IV c.7 (1411) The Riot Act, empowering justices of the peace and sheriffs to arrest all rioters, record their offences and undertake enquiries into such unlawful assemblies; Dalton, The country justice, pp. 453-455; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of the Rights of Persons, vol. 1, Oxford: Clarendon Press, p. 343; Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Public Wrongs, vol. 4, Oxford: Clarendon Press, pp. 146-147.
[134] 1 Geo., 1 c.5 (1715).

Although the Riot Act provided that participants in riots might be, "adjudged felons, and shall suffer death as in case of felony, without benefit of clergy", only thirty-six people (twenty-five men and nine women) out of many hundreds of rioters were charged with riotous assembly, which resulted in four men being convicted and punished by way of a term of imprisonment and a small fine. The highest sentences to transportation for seven years were reserved for offences of theft under the provisions of the Corn Laws. If one accepts the view that in ordinary circumstance, women were generally less likely than men to engage in physical violence, when women were cited as having acted in a riotous manner, or participating in the destruction of property, or physically assaulting someone, one might expect the severest penalties to follow. Nevertheless, while a higher than average percentage of women were indicted for their role in the Dewsbury riots, none were convicted of any offence at the assizes or quarter sessions for the West Riding. The only women convicted and sentenced to a term of imprisonment in the house of correction were concerned in the riots in Yarm in the North Riding.

Hay maintained that in times of dearth or high food prices theft was more likely to be carried out by people of otherwise good character and reasoned that in such circumstances jurors were more likely to show mercy: from which "we may make the assumption that the same facts made prosecutors react in a similar fashion".[135] There is, however, no direct evidence to support an assumption of sympathy on the part of the victims of assault, trespass and theft resulting from the riots towards either the mob as a whole or any particular individual participant. There is little reason to expect that John Furniss would want to show mercy on those who came to his mill "armed with clubs", threatening to break down the door.[136] It is likely that recognizances to prosecute were issued both in

[135] Hay, D. (1982) 'War, Dearth and Theft in the Eighteenth Century', Past and Present, vol. 95 (1), pp. 117-160, p. 156.
[136] TNA ASSI 45/21/4/91, information concerning a riot at Crigglestone.

order to ensure that charges under the Riot Act were prosecuted on behalf of the local authorities, and to ensure that the individual victims prosecuted those who stole from them.

Food riots were not aimed at the higher levels of government and rioters were not generally motivated by a desire to change the social hierarchy. Nevertheless, violent demonstrations showed that the common people could create major problems for the governing elite.[137] The food riots were both prolonged and violent and, in the absence of any standing civil force, disturbances had to be managed locally by the sheriffs and justices of the peace who were later to preside over legal proceedings arising out of the riots.

Conclusion (riot)

The overriding aims of those holding office were the need to restore peace in the community and to appease the masses by invoking trading regulations. As Thompson observed:

> It is the restraint, rather than the disorder, which is remarkable; and there can be no doubt that the actions, were approved by an overwhelming popular consensus. There is a deeply-felt conviction that prices *ought*, in times of dearth, to be regulated, and that the profiteer put himself outside of society.[138]

Violence was an act of last resort but when one side broke the rules of the game, by failing to provide grain at a reasonable price, the rules changed and the response of the crowd to take action was direct and violent. In turn, justices of the peace had to respond quickly to the rioters before the situation escalated. The actions of both male and female rioters were audacious: thefts did not take place in secret nor necessarily at dead of night, substantial damage was caused to property and some victims were threatened with violence. The riots

[137] Bohstedt, J. (1983) Riots and community politics in England and Wales, 1790-1810, Cambridge, Mass.; London: Harvard University Press, p. 26; Underdown, Revel, Riot and Rebellion, pp. 9-11.
[138] Thompson, 'The Moral Economy', p. 112.

did not involve completely mindless acts of violence but specifically targeted barns and mills, their male owners and employees, so that grain and other foodstuffs was either destroyed or stolen by male and female activists. Financial loss to the victims must have been significant, with an additional loss to their business reputation when it was considered that they had unnecessarily antagonised the local population through the continued export of grain.

There is some evidence of a different *modus operandi* between men and women and the operation of *coverture* in the act of rioting. The protection of a woman from the full force of the law may be evidenced by the apparent protection exercised by their male counterparts, whereby women were encouraged to cause damage to property, short of actual burglary, and carried out acts of verbal intimidation, leaving the men to undertake offences such as theft which might attract a higher sentence. Nonetheless, it would be unfair to describe female roles as merely subservient given the descriptions of their activities and there is no evidence in the assize records that any woman was willing to plead that she was a subservient wife, only being persuaded into participation by her husband. All told, the food riots of 1740 provide evidence of atypical female activity described by Walker.[139] As observed by other historians, for other regions and at different times, women were present in significant numbers and were as active as men; they were no less of a threat and no less deserving of punishment than men; and each came before the courts suffering from equal economic vulnerability.[140]

The pre-trial processes do not necessarily provide evidence of gender divergent attitudes operating within the judicial system, when more than 20 per cent of people

[139] Walker, Crime, Gender and Social Order, p. 160.
[140] Shoemaker, Gender in English Society, p. 234; Stevenson, Popular disturbances in England, pp. 125-126; Thompson, 'The Moral Economy', pp. 114-118.

referred to the assize and quarter sessions for their participation in the riots of Dewsbury were female. The failure to bring those women to trial either points towards a gendered dimension in the decision-making process of the grand jury who may have dismissed the charges against them or suggests that private settlements were agreed on the non-felonious charges. As a result attitudes of the petty jury and assize judge to female rioters are untested for these Yorkshire riots.

Once indictments against the male rioters came to trial, allegations of breaking and entering may have failed if a person of one gender carried out the 'breaking' and the other the 'entry' into a building. Charges for theft may have failed if there were problems identifying what goods had been stolen and by whom, particularly when small quantities were stolen, and the remainder damaged or destroyed. There were further evidential problems in identifying the owner of stolen grain when a badger or miller held corn belonging to multiple farmers and grain merchants. Evidential technicalities may have played at least as great a part as gender for victim prosecutors and magistrates in deciding which individuals to name in the bills of preferment. Where cases did proceed to trial, the same evidential issues would further allow a sympathetic grand jury to dismiss an indictment or a petty jury to find a defendant not guilty, or guilty of a lesser offence.

Failure to prosecute any man or woman on a capital charge under the Riot Act may be explained in terms of evidential difficulties or, more probably, because of the preference of local magistrates to restore and maintain peace in the community after a disturbance, over any desire for vengeful action. The multiple roles of magistrates and members of a jury meant that they would have understood the plight of the protestors, nevertheless, despite the risk of further inflaming the rioters, a number of protestors were seized at the scene of the riots (or shortly thereafter) and held in gaol pending trial. While many of them would

have been detained in gaol for some time, some may have been 'persuaded' to reach a mediated settlement on the lesser charges so that the bills against them were withdrawn before the committal hearing. It may have been considered that the threat of prosecution and holding a smaller group for any length of time, whether or not subsequently convicted, sufficed as a deterrent to the majority of people and as a punishment for those detained. If men had been convicted in great numbers, imprisoned or transported, there would have been a knock-on effect to their employers in the textile industry. Whether or not a grand or petty juror had any connection to the men or trades concerned, they would in any event have been fully aware of the impact on the local economy if too many were prosecuted and convicted. Although responses of justices and juries indicate some sympathy with the cause of the mob and frustration with the merchants, responses at a local level differ from that of the assize judge as the representative of national government, without local attachment.

Chapter: Conclusion.

The quality of mercy is not strain'd,
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blest:
It blesseth him that gives and him that takes.[1]

At the beginning of the twenty-first century, courts continue to deal with allegations of sexual assaults on children, rape, domestic abuse, murder within families and violent fights between men who have had too much to drink. Homes continue to be burgled, need or envy still drive people to steal and angry mobs meet on the streets when those in authority fail to respond to their concerns about unemployment or the anticipation that incomes will not be adequate to meet rising food prices. An assessment of the fairness or equality shown to men and women before the courts assumes that people in similar circumstance would be treated in the same way, except men and women are not (and were not) necessarily involved in identical activities. Men did, and still do, commit the majority of crimes but there is a danger in projecting twenty-first century values onto eighteenth-century environments when interpreting responses to male and female offending in the eighteenth century.[2] Notions of what might be considered a criminal act and the appropriate punishment relative to the nature of the crime committed change over time and must be viewed within the social context of the period in which the offence took place. Furthermore, because of the gender roles taken (or expected of) men and women in society at any given time, certain female activities have been more harshly condemned than when the same activities were undertaken by a man.

[1] Shakespeare, William, The Merchant of Venice, scene 1, Portia's speech.
[2] Tosh, John (2010, fifth edition) The Pursuit of History, Harlow, London, New York: Longman, p. 192.

Informal dispute resolution

This thesis provides evidence of the informal processes for the resolution of disputes which were active in mid-eighteenth century Yorkshire, whether through the involvement family members, the wider community or facilities for arbitration in the business community. When informal procedures failed, complaints could be referred to a sole magistrate, justices in petty sessions or one of the manor courts, without recourse to the full adversarial trial process at quarter session or assizes. A voluntary arbitration process had the additional benefit of allowing unrestricted access to legal advice and representation, although, mediated settlements brokered by a sole magistrate were unlikely to offer the same support. Even though the summary powers of the sole or petty justices to mediate settlements were limited to misdemeanours, the number of crimes that fell within that category was fairly extensive and included all forms of non-felonious assaults. Therefore, many defendants would have been open to pressure from their families, victims, and magistrates (whether guilty or innocent) to subject themselves to settlements that were not necessarily beneficial to them, rather than stand trial and risk conviction and the sentence of the court. Of course, victims of crime were also open to intimidation from the accused or their family to settle a matter privately, particularly if it avoided bringing 'shame' on the individual and his or her family.

There were no restrictions on private settlements of misdemeanours and the settlement of all manner of violent crimes might be mediated outside of the court system. Even though the law prohibited the compounding of a felonious larceny, justices were empowered to exercise other civil powers to determine some apparent larcenies as a trespass to goods and make orders for compensation. Magisterial powers were not standardised until 1848 and the administration of mediated solutions may not have been

consistent across different counties, or within the various minor courts.[3] Further work in this area, to include the role of manorial courts would assist in a better understanding of the pre-trial process throughout the country.

As an informal response to certain situations, evidence of *charivari* is most commonly found in the court records for Yorkshire in the activities of the rioters of 1740. For example, leaving a sum of money which represented, in their opinion, a 'fair price' for stolen grain was an invocation by the mob for magistrates to undertake their duty by holding an assize of bread and for merchants to abide by such decisions.[4] Likewise the beating of a drum through Wakefield in an attempt to release prisoners seized during the riots was a further act of charivari in which the rioters mocked the justices and militia called upon to supress their activities.[5] In other circumstances, one might expect to find evidence of *charivari* in the public condemnation of a cuckold when a husband fell short of the patriarchal ideal, such as when one husband was obliged to make public the fact that he had lost control of his wife when he sought an order that she keep the peace towards him,[6] or when the hen pecked rioter William Fisher was "compelled" by his wife to go out and steal grain.[7] Nevertheless, there is no evidence of charivari in either case, and nor does it appear in allegations of rape, when one might again expect members of the community to exercise 'local justice' by shaming sexual offenders in their community.

For the offence of rape, the absence of *charivari* may be evidence of doubt as to the veracity of the claims by some women, when in other circumstances an unmarried woman

[3] Baker, J.H. (2007, fourth edition, first published 1971) An Introduction to English Legal History, Oxford: Oxford University Press, p. 511; 11 & 12 Vict., c.43 (1848) The Summary Jurisdiction Act, which consolidated and improved the holding of Petty Sessions.
[4] TNA ASSI 45/21/4 f. 91, 20 June 1740, information of John Furnis, millman.
[5] TNA SP 36/50 ff. 349-352, 30 April 1740, report of Sir John Kaye J.P., Sir Rowland Winn and others of Wakefield to Lord Newcastle concerning riots in Dewsbury; York Courant, 6 May 1740, report on the riots in Dewsbury.
[6] ERY Beverley, QSF/246/C/8, Christmas 1769, recognizance of Henry Markham of Wressle.
[7] TNA SP 36/53 f. 36, 7 October 1740, petition.

who was found to be pregnant could be made to stand before the church wearing 'robes of shame' as an act of penance.[8] Formal punishments such as the pillory and public flogging also brought shame and dishonour on the individual and demonstrated a public pageant aimed at the deterrence from crime of the assembled public. In that respect, women in Yorkshire (at least) were publicly flogged in greater numbers than men during the periods surveyed. However, for the most serious crimes, a man capitally convicted of murder or highway robbery might be hanged in chains near the scene of the crime and a woman who murdered her husband burnt at the stake so that justice could, again, be seen to be done.[9]

One hypothesis emerging from this thesis is that the absence of recorded decisions against a significant proportion of recorded crimes is evidence of the widespread use of compromise agreements in place of criminal trials and judicial sentencing. Clerks of assizes were expected to produce four records of calendars, detailing sentences passed, and copies of many of the calendars produced for the clerk and gaoler survive for Yorkshire.[10] Private arrangements for compensation were not, however, part of the formal proceedings of the court and justices and judges had no powers to order (or requirement to record) agreements for compensation to settle a criminal dispute. Nonetheless, solicitors' notebooks refer to their active involvement in advising, if not representing, their clients and, that on their advice, many claims were settled out of court. The absence of recorded outcomes in the quarter session and assize minute books, or against assize indictments does not occur in blocks of entries. Instead, omissions are found at random points in the records, across both periods surveyed and in all categories of offending.

[8] Gillis, John R. (1985) For better, for worse: British marriages, 1600 to the present, New York, Oxford: Oxford University Press, p. 131, n. 131, concerning practices in Pickering, West Yorkshire.
[9] Cockburn, J.S. (1985) Calendar of Assize Records: Home Circuit Indictments Elizabeth I and James I, Introduction, London: HMSO, p. 124.
[10] See p. 15; Stubbs, W., and G. Talmash (1749, second edition) The Crown Circuit Companion, J. Worrall: London, p. 19.

The rationale for the hypothesis is that there was no relevant information for a legal clerk to record rather than a clerical omission repeated year after year in each court, wherever it sat in the county. While it is difficult to conclusively prove the reason for an omission, other outcomes are recorded against the individual names of criminal defendants, yet, there is no recording of any private arrangements in either court during either of the periods surveyed. Therefore, it is entirely possible that some unknown outcomes, particularly for a misdemeanour, can be accounted for by private settlements. Other reasons for the failure to record some decisions mooted in this thesis, include the arrangement whereby men or women bound by an order to keep the peace imposed by a single magistrate could be released from the court without further charge, if he or she had managed to keep out of trouble between the time of the order and the court sitting. Another proposition is that some cases were removed from the court record due to challenges to an indictment by way of a traverse or referral to the King's Bench. A successful challenge to an indictment meant that the claim did not return to the court for trial, while some matters referred to the King's Bench were determined there and, similarly, did not return to the referring court. Both of these processes were dependant on an initial understanding of the potential to question the judicial processes and access to independent financial means to pay for legal representation to put legal arguments; therefore, they are likely to account for only a small percentage of unknown outcomes.

Judicial processes

From the time formal judicial proceedings commenced, complaints were subject to the rules of evidence and procedure described in chapters 2-3, which were administered by qualified legal clerks and a centralised judiciary, in a legal system that was firmly rooted in eighteenth-century society in England. Many of the features that characterise the court system today were in place by as early as the fourteenth century. By the eighteenth

century, common law and public statutes co-existed and criminal jurisdiction was primarily devolved between the two courts (quarters sessions, now known as the magistrates' court and assizes, now known as the crown court); one court presided over by magistrates and the other by judges of the High Court. During the eighteenth century, the business of the courts was subject to a rapidly evolving body of rules of evidence and procedure that were employed through the increasing involvement of legal counsel.

Adherence to the rules of law, evidence and procedure was of primary importance in the exercise of justice, so that considerations as to the exercise of discretion should only have been necessary when the rules of law proved inadequate to particular circumstances. The courts systematically pursued policies which often had a major role in shaping how justice was actually experienced by the ordinary people. A multiplicity of factors determined the exercise of mercy from the determined prosecutor, to 'pious perjury' by trial juries and the discretionary powers of a sentencing justice or an assize judge who was directed not only to execute the law but to deter crime in the provinces. As Whitman observed, in interpreting the outcomes of criminal trials it is important to distinguish between issues of fact and proof, in contrast to ideas of morality and social norms.[11] The courts were primarily institutions designed to establish the proof of complaints and, as illustrated in the draft directions to Judges set out in Appendix 3.2, any directions as to the punishment of vice or immorality are firmly rooted within the context of upholding the rule of law. The evidence of judicial practices in Yorkshire is of an increasingly unified legal system in which the rules of evidence and procedure were evolving under the scrutiny of a progressively active criminal bar. At the same time, decisions reached in the courts of Yorkshire provide evidence of the discretionary and often gendered, nature of the law and the power that gave to those who administered the judicial system.

[11] Whitman, James Q. (2008) The origins of reasonable doubt: theological roots of the criminal trial, New Haven, Conn., London: Yale University Press, p. 25.

By the eighteenth century the common law had come to define three principal capital offences against the person, that is, offences against life, goods and the home. As illustrated in the foregoing chapters, the eighteenth century witnessed a system in which quite serious acts of physical violence were relatively ignored, while a minor theft undertaken through necessity could be subject to the same punishment as for the commission of a murder. Contrasting response to crimes of violence and crimes against property reflects the hierarchical nature of society in which the elite were large land and property owners. Legislative changes centred on crimes against property as they redefined some offences and created many new ones, while amending evidential and sentencing requirements, and gave a strong impression that those experiencing hardship deserved punishment.[12] Such was parliament's concern with the protection of 'rights' to property that it prohibited a victim of theft from reaching a private settlement, by 'compounding' a claim with the thief. However, at a local level, magistrates were able to exercise their civil powers to determine minor acts of theft, on the basis of a trespass to goods, and order compensation in settlement of a dispute.

While women accounted for a smaller proportion of offenders than men in Yorkshire, and evidence examined for this thesis generally supports King's conclusion for the late eighteenth and early nineteenth centuries, that there is little evidence of a decline in female involvement in indictable crimes during the eighteenth century.[13] King further suggested that woman may have received a more sympathetic hearing in the courts because they were perceived to pose a "less serious threat to lives, property and order".[14] However, the

[12] Black, J. (2005) Culture in Eighteenth-Century England: A subject for Taste, London: Hambledon Continuum, p. xviii; King, Peter (2000) Crime, Justice and Discretion in England 1740-1820, Oxford: Oxford University Press, p. 365.
[13] King, Peter (2006, first edition) Crime and Law in England, 1750-1840: Remaking Justice from the Margins, Cambridge: Cambridge University Press, p. 220.
[14] King, Crime and Law in England, 1750-1840, p. 192.

evidence reviewed in for this thesis tends to support Palk's observations that responses to female offending saw the judicial process pulling in different ways at different points of the process,[15] so that the gap between the percentage of men and women who committed acts of violence was wider than between those who committed acts of theft. The data collated from the court records of eighteenth-century Yorkshire also provides evidence of a continuing preoccupation with the prosecution of both men and women for offences relating to sexual behaviour, as identified by Laura Gowing during the sixteenth and seventeenth centuries.[16]

The experiences of men and women within the judicial process during the eighteenth century reflect changes in society as to what was deemed acceptable or unacceptable behaviour by either sex, combined with the effects of new legislation passed under the 'Bloody Code'. As Hay observed more generally, circuit judges were active in their recommendation for mercy from a capital sentence for members of either sex in an attempt to counterbalance the excesses of the 'Bloody Code'.[17] However, inconsistencies in the treatment of male and female defendants are evident in the court records for Yorkshire, where a recurring theme is the greater leniency extended to women under threat of the death penalty, alongside the consistently more severe punishment of women when that threat was removed.

As others have observed, the historical experience of early modern women was much less uniform than once thought: factors affecting both men and women include, social

[15] Palk, Deidre (2006) Gender, Crime and Judicial Discretion, 1780-1830, Suffolk: The Boydell Press, p. 155.
[16] Gowing, Laura (1998, first edition 1996) Domestic Dangers: Women, Words, and Sex in Early Modern London, Oxford: Oxford University Press, p. 3.
[17] Hay, D. (1975) 'Property, Authority and the Criminal Law', in Hay, D., P. Linebaugh, and E.P. Thompson (editors), Albion's Fatal Tree, London: Allen Lane, pp. 17-64, p. 57.

class, geography (urban versus rural) and the "equality of poverty".[18] While their working environments might be different, the economy of the poor was such that men and women were likely to have similar financial needs and commitments during their single and married lives. Both unmarried men and women might be expected to support themselves financially and, when married, might have a family to feed and support. It is possibly for such reasons that married women benefited from a lower conviction rate than single women during the periods surveyed. While particularly female issues concerned marital status, health and the number of children in the family, single women more often found themselves on 'the bottom of the economic heap' and some found occupation through crime.[19] As a result, single women accounted for about two-thirds of female defendants appearing before the quarter sessions for Yorkshire (Table 2.4) and three-quarters of female defendants at the assizes (Table 3.5).

Although fewer women than men were bound to take the lead as prosecutors in Yorkshire, women played a significant role in the detection and reporting of all manner of crimes as they reported suspicions of infanticide, notified the authorities of suspicious deaths and acted as mediators in domestic disputes. Nonetheless, it was generally male family members or men from the wider community who were encouraged to police the behaviour of troublemakers; either by acting as sureties for other men and the occasional woman who had been bound over to keep the peace, or to ensure the attendance of prosecutors, their witnesses and bailed defendants at subsequent assize and quarter sessions. The relative absence of orders against women to keep the peace in Yorkshire is

[18] Wiesner, M.A. (1993) Women and Gender in Early Modern Europe, Cambridge: Cambridge University Press, pp. 3-30.
[19] Somerville, M.R. (1995) Sex and Subjection: Attitudes to Women in Early-Modern Society, London, New York: Arnold, p. 228.

likely to have arisen because of doubts about the binding nature of orders against infants and *femmes covert* without additional sureties.[20]

Defendants were drawn into the legal system because of complaints made against them by other people, although for many it was their actions which led to that state of affairs. Nevertheless, defendants have been described as "passive objects without rights"[21] because of rules restricting a defendant's right to bail, limited access to legal representation, the exclusion of defendants as 'interested parties' from giving evidence on their own behalf and restrictive legislation which placed rights to property above human rights. Evidence of limited access to legal representation in Yorkshire can be found in the instances of recourse to challenges by way of a traverse or writs of *certiorari* (which required legal argument presented by counsel). Without the benefit of legal assistance, male and female defendants would have been handicapped in any attempt to mount a credible defence, while the opportunities for clemency at each stage relied on the defendant's powers to persuade victims, grand juries, petty juries and presiding justices and judges to exercise their discretionary powers to mitigate the harshness of the 'Bloody Code'.

Recognizances to secure the attendance of prosecutors, prosecution witnesses and bailed defendants were powerful tools in the hands of magistrates. Doubts about a married woman's legal ability to enter into a binding agreement meant that her husband could be bound on her behalf, or that she was bound over on terms demanding imprisonment for a breach. The evidence for single women appearing before the justices for Yorkshire is that they were more likely to be required to provide higher recognizances than their male counterparts, whether bound for the prosecution or for the defence, possibly because as the

[20] Burn, Richard (1755) Justice of the Peace and Parish Officer, vol. 2, London, p. 431.
[21] Potter, Harry (2012) 'Presumed Innocent: The Strange Case of the Law', episode 3 of 3, BBC Bristol.

'weaker sex' they were believed to be more vulnerable to intimidation by their opponent. Similarly, while social status might serve to exempt a 'gentleman' of the community from remand in gaol, many other defendants were committed to gaol pending trial for relatively minor offences. There were many diverse reasons why prosecutors and witnesses failed to appear in court, even though they risked the court claiming the sum of the recognizance and imprisonment for debt if could not pay. At the same time, the system of recognizances was susceptible to exploitation by individuals and a detailed survey of records pertaining to the issue and enforcement of recognizances would enhance our understanding of the pre-trial process and the power play between those caught up in the system. Such a detailed review is beyond the scope of this thesis but a thorough review of those records would provide interesting insights into the pressures on men and women to prosecute and the use of financial bonds to pressurize reluctant witnesses who feared financial recriminations from the court more than intimidation by an accused.

Evidence of a greater intolerance of men than women who offended can be found in the quarter sessions, where grand juries dismissed a lower percentage of bills presented against male defendants than their female counterparts, indicating a greater desire to secure the conviction of male defendants and their punishment by the courts. Unfortunately, data available for proceedings before a grand jury at the assizes is too small for credible analysis. Men and women were equally likely to be dismissed from the quarter sessions for want of prosecution and, although both sexes fared better at the assizes, women were favoured marginally more than their male counterparts in such instances. That change suggests a greater leniency to women who might be accused of a potential capital offence, when prosecutors were satisfied by the 'punishment' of a woman remanded in gaol pending her trial, and a greater willingness to forgo the further punishment of a woman if she were tried and convicted.

Although the influence of magistrates and assize judges should not be ignored or underestimated, the frequent use of partial verdicts and acquittals by petty juries provides evidence of the independence of juries and their willingness to resist the seemingly inevitable consequences of the law. In that respect, women were more often the beneficiaries of full acquittals and partial verdicts than men at both quarter sessions and assizes in Yorkshire (Tables 2.6 and 3.2). By understating offences committed or the value of goods stolen, pious juries allowed men and women to escape the greater excesses of the 'Bloody Code'.

Conviction rates and sentencing policies

Larceny was the most common offence recorded for the quarter sessions where theft accounted for a higher percentage of offences committed by women than their male counterparts (Table 2.1). Therefore, it is not unexpected to find that a higher percentage of female than male convicts were sentenced at the quarter sessions to be whipped or transported, the usual punishments for theft (Table 2.7). More serious offences committed by a first time felon were punishable by transportation and a slightly higher percentage of female convicts than male convicts were sentenced to be transported at both quarter sessions and assizes. Although the higher percentage of female convicts sentenced to be whipped or transported reflects the nature of the crimes more frequently committed by women, the public flogging and shaming of women in Yorkshire found throughout the sample periods was not necessarily repeated in other parts of the country at the later part of the century.[22] The higher percentage of female rather than male thieves sentenced to public flogging or transportation points to the harsher sentencing of women considered to be particularly undesirable. Nevertheless, it is not possible to conclude absolutely that women

[22] King, Crime and Law in England, 1750-1840, p. 193; Morgan, Gwenda and Peter Rushton (1998) Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718-1820, Florence, KY, USA: Routledge, pp.130-131.

were treated more harshly than their male counterparts if they had, perhaps, been shown some earlier exercise of mercy which caused their case to be kept within the jurisdiction of the lower court, or below the capital threshold. The high level of fines as punishment at quarter sessions reflects the level of minor assaults determined in the lower court, although, the fining of men was far higher than of female convicts (Table 2.7). In contrast, fines were applied to a far lesser extent at the Yorkshire Assizes when fewer minor assaults were referred to the assizes (Table 3.4).

Gatrell's submission that there was a growing sense that women ought to be pitied not punished, was made in respect of capital punishments.[23] The data collated demonstrates a preference for the full or partial acquittal of women for offences which might otherwise carry a capital sentence, pointing to a growing reluctance by trial juries to capitally sentence women, which is not mirrored in the conviction rate of male defendants. It is not possible to comment on the attitude of circuit judges in respect of a capitally convicted woman when the numbers involved are so small, although it seems to be the case that the only women who failed to be reprieved were those convicted of petty treason and, therefore, beyond the powers of an assize judge to grant a reprieve (Table 3.5). Otherwise, the evidence from the Yorkshire Assizes is that, when the threat of a capital sentence was removed an increasing percentage of women were sentenced to transportation.

The records surveyed demonstrate that men were far more likely than women to be accused of the homicide of another adult. Indictments for homicides referred to the Yorkshire Assizes were almost invariably drafted in terms of murder, leaving it to the petty jury to determine issues of intent and recklessness in order to differentiate between murder and manslaughter, although it is an area that requires further research using coroner's

[23] Gatrell, V.A. (1996) 'Chivalry and the female victim', in The Hanging Tree: Execution and the English People 1770-1868, Oxford: Oxford University Press, pp. 334-347.

records. There appears to have been a general reluctance in Yorkshire to hang many men or women for murder when a partial verdict allowed for a finding of manslaughter, or a circuit judge might recommend a capital convict for mercy (Table 4.4).

Data from the assize sessions for Yorkshire confirms other evidence of the spheres in which male and female offending took place, where the majority of the victims of women who killed were close family members, while men were more likely to be charged with the murder of other men as a result of incidents in the street or workplace.[24] Walker observed that while male violence might be condoned when it was directed to uphold household order, female violence in the home subverted that order.[25] Nonetheless, it appears to have been the case in eighteenth century Yorkshire that some petty juries might condemn a man who abused his power as a husband or master and caused the death of his wife or servant. That was particularly noticeable when a man's actions were associated with pregnancy, abortion or infanticide, so that an assize judge might punish him more severely by an order that he hang and his body be dissected and anatomized.

As demonstrated in chapter 4, there was a particularly close link between women who killed and the home and gendered rules of law applied to women convicted of killing their husbands or accused of the murder of a new-born child, although, in practice, the vast majority of complaints in homicide laid against women concerned infanticide, with few allegations that they were concerned in the homicide of a husband or any other adult (Table 4.3). Nevertheless, because of the gendered bias of the law and despite the erroneous association between women and poisoning, a man who poisoned his wife in Yorkshire might find his capital sentence commuted to transportation while a woman could

[24] Beattie, J.M. (2002, first published 1986) Crime and the Courts in England 1660-1800, Oxford: Oxford University Press, p. 106; Walker, Garthine (2003) Crime, Gender and Social Order in Early Modern England, Cambridge: Cambridge University Press, pp. 134-135.
[25] Walker, Crime, Gender and Social Order, p. 140.

expect no reprieve from the order that she burn at the stake save, perhaps, for the occasion of her successfully pleading her belly.

As Blackstone observed, the protection offered by coverture did not apply to murder, therefore, the few women who committed the most serious acts of violence could expect to be punished on similar terms as their male counterparts, or more harshly when it concerned the murder of their spouse.[26] In absolute terms, the capital conviction of men and women in Yorkshire for homicide, without reprieve, during the periods surveyed represents an average of only one man every two years and one woman every seven years (Table 4.5).

The number of men and women accused of homicide in Yorkshire between 1735 and 1775 appears to have been higher than in some other parts of the country. In contrast to Beattie's study of Surrey, grand juries for Yorkshire were reluctant to discharge a bill for homicide and, from the records surveyed, all men and women accused of an adult homicide were put to trial on the charges alleged. As in Surrey, a finding of manslaughter by a coroner's jury in Yorkshire did not mean that the indictment at the assizes automatically repeated the lower charge, although, as Sharpe and Dickinson observed, insufficient work has been carried out yet on coroner's records to understand fully how the process operated.[27]

The greater percentage of indictments of women for homicide in Yorkshire most often concerned infanticide, nevertheless, despite the continued authority of the statute of 1624 to place the burden of proof on the accused mother to prove her innocence, the outcome was that only one woman was convicted of infanticide during either of the two periods

[26] See p. 184.
[27] Beattie, Crime and the Courts, p. 80; Sharpe, James and J.R. Dickinson (2011) 'Coroners' Inquests in an English County, 1600-1800: a Preliminary Survey', Northern History, Leeds: Maney Publishing for the University of Leeds, vol. 48 (2), pp. 253-269, p. 266.

surveyed. Whether done intentionally or not, the demarcation between common law murder and statutory infanticide was blurred when indictments for infanticide in Yorkshire were drafted in terms of murder, rather than concealment under the statute. As a result, an indictment for the murder of an infant could be dismissed by a petty jury where medical evidence was insufficient to identify the causal link necessary for a conviction for murder. From that one might infer that members of the rate paying community who made up the magistracy and members of grand and petty juries were not prepared to sanction a capital sentence, even though they morally condemned single women who brought bastard children into the world (being a potential burden on the parish rate).[28]

When comparing the outcomes for women accused of infanticide and women as the victims of rape there is a paradox, in that flaws in medical knowledge worked to acquit women accused of infanticide (which benefited the unmarried woman), while other medical/evidential problems led to the acquittal of many alleged rapists. The law created another dilemma for the victim of rape when on the one hand, a man deserved punishment if he violated the chastity of a woman and, on the other, a woman who failed to fight off her attacker and 'allowed' herself to be raped, lost her credibility. Only a man could be accused of rape or sodomy and, although those offences attracted a capital sentence, the grand and petty juries of Yorkshire were reluctant to convict capitally any man for either offence, so that any convictions were for the attempted offence or simple assault. The incidence of prosecutions for rape and sodomy were very low and the outcomes point towards the use of private settlements, thus avoiding the public humiliation of the majority of victims and defendants. While a woman, or at least her family, may have been satisfied by the receipt of compensation in exchange for foregoing a prosecution for a capital offence, evidence of anti-female bias in the statutory rules of evidence relevant to rape was

[28] Jackson, Mark (1996) New-Born Child Murder: Women, illegitimacy and the courts in eighteenth-century England, Manchester and New York: Manchester University Press, p. 11.

such that the majority of victims would have been well advised by any legal adviser to settle the complaint out of court. The evidence is that many men charged with rape or sodomy escaped serious punishment and those that were convicted were in turn punished by a relatively small fine subject, possibly following an offer of monetary compensation in exchange for the prosecution on a lower charge (Table 5.6).

As King observed, "the law held different meanings for different people and its pluralistic nature meant that each individual or social group might have a range of often contradictory experiences of legal institutions".[29] When Mary Ormand committed burglary and theft, the fact that the house belonged to Sir William Lowther, bart., M.P., may have influenced the investigation, trial and sentencing processes which resulted in her capital conviction (later respited for transportation).[30] Justice Reynolds was quite explicit when he advised against a reduction in the sentence of transportation for seven years of a sixty-seven year old man in poor health, for the reason that he considered all the men convicted for their part in the riots of 1740 should be transported, by way of example to others.[31] Yet, in other circumstances, John Proctor, a tinker, was found only guilty of a simple assault and sentenced to a small fine following his indictment for an assault with intent to rape.[32]

Changes in the law relating to the benefit of clergy greatly influenced women's experience in the judicial process. Firstly, the extension of the benefit of clergy to women convicted of a capital offence (which at first appears to have been an exercise of leniency towards women) may have led to an increase in the number of women charged with and/or convicted of a capital offence, when juries were aware that first time felons could expect a reprieve from a capital sentence. Secondly, entitlement to the benefit of clergy resulted in

[29] King, Crime, Justice and Discretion, p. 3.
[30] TNA ASSI 45/20/1/ 63-94 (1735), depositions and recognizances; TNA ASSI 41/2 ff. 119, City of York gaol delivery record for 11 March 1735.
[31] TNA SP 36/53 f. 93, 21 October 1740, report.
[32] TNA ASSI 45/30/2/122-123; TNA ASSI 41/6, York County, Aug 1772; TNA E 389/245 f. 171.

an increasing percentage of women sentenced to be transported to America as opposed to their male counterparts who might be fined and/or serve a short term in gaol. Thirdly, the exclusion of the benefit of clergy from an increasing number of statutory offences exposed those charged with such offences to harsher sentencing options following conviction.

Despite the conviction of a few women who violated conventional ideas of female respectability, the evidence tends towards a more lenient approach in the sentencing of female offenders for an assault than of their male counterparts (Tables 5.4 and 5.5). As with homicides, women's acts of non-fatal violence were more commonly associated with the home and, as such, were of less concern to the authorities than the more frequent acts of public violence by men. Even so, the lower sentencing patterns of women should not be interpreted as evidence of the more trivial nature of female violence rather than its private nature. Therefore, when female violence moved into the public sphere sentencing might change, as demonstrated in the relationship between female violence and alehouse keeping.

The evidence from Yorkshire is that few claims of domestic violence were referred to the courts at a time when society recognised a husband's right to chastise his wife, as illustrated by the infrequent use of orders to keep the peace and only short periods of detention to punish a husband who exceeded the bounds of acceptable behaviour (Tables 1.1 and 5.4). However, there are insufficient other gendered surveys of the incidence of indictments for assault and contrast the work of both quarter session and assize records archives in order to place their findings within the context of eighteenth-century society. Therefore, this area of research would benefit from comparative studies of other regions in order to better understand female participation in interpersonal violence, which goes beyond the incidence of domestic violence, both in relation to the eighteenth century and in contrast to other time periods.

While the periods surveyed provide evidence of a decline in female participation in thefts, that trend may not necessary result from a growing leniency towards women but may reflect the greater participation of women in acquisitive offending during times of need and the reluctance of women to engage in an increasing range of offences against property that attracted a capital sentence without benefit of clergy. The changing relationship between men and women and the theft of livestock, after the reclassification of the theft of cattle and sheep as capital offences in 1740, provides strong evidence that they were aware of the impact of legislative changes and altered their behaviour to avoid committing a capital sentence. Women continued to risk a fine or whipping for the theft of a chicken or goose but rarely risked the threat of hanging or transportation for seven years by stealing larger livestock. In contrast, while men continued to steal all types of livestock, their main targets were sheep stolen for financial gain and there were fewer indictments for the theft of lower value sheep and cattle after 1740. At the same time, and in contrast to the sixteenth and seventeenth centuries, the evidence from Yorkshire is that an increasing number of individual complainants in horse theft failed to prosecute their bills and appear to have been satisfied by the retrieval of their property and a short term in prison served by the culprits, although the authorities were more vigilant in the prosecution of organised crime associated with horse rustling.

A man's house was his castle and any man or woman who violated the sanctity of his home should have expected to be prosecuted at the highest level and without preference to either sex. Burglary and breaking and entering make up almost one quarter of all indictments of theft against female defendants and around one-fifth of indictments of male defendants for similar offences in the assize courts during the sample periods. These figures represent the tendency to refer the more serious cases to the higher court and

suggest the greater public condemnation of women accused of such offences. Nevertheless, one-third of all defendants charged with burglary/breaking and entering, whether male or female, were convicted of a lesser offence and more than one-third were acquitted (Table 6.6). The evidence is of a reluctance by juries and judges to allow many men and fewer women to be capitally convicted, when every woman capitally convicted of burglary during the periods surveyed was reprieved for transportation, while a judge's recommendation for mercy was extended to three quarters of men similarly convicted (Table 6.7). However, when a partial verdict had acted to reduce the charges against the accused, all female convicts were sentenced to be transported while a wider range of sentencing options which entailed less onerous consequences were utilised to punish their male counterparts.

Parliament's introduction of very specific legislation relating to offences against property included a trend for higher financial thresholds for capital offences, probably influenced by the diminishing value of the one shilling threshold for a capital offence. Therefore, higher capital thresholds represented an act of mercy by parliament, although, the law would have perhaps been clearer and more consistently applied if financial boundaries were reviewed across the board rather than through piecemeal legislation. At the same time, defendants in larceny were disadvantaged when new laws provided for the admission of accomplice evidence to secure the conviction of one party by offering an exemption from prosecution to an associate who was willing to turn king's evidence. At the same time, the 'reward' system encouraged professional 'thief takers' and provided for the admission of questionable evidence to secure a conviction. Nonetheless, the evidence of the lower court suggests that sentencing justices in Yorkshire required greater evidence

of criminality in female offenders when a greater percentage of female than male convicts transported for theft had been accused of committing more than one act of theft.[33]

Because the authority to transport felons was not universally available until 1718, particularly for theft-related crimes, transportation does not feature in the sentencing practices described in studies of earlier periods, while the conditions of transportation changed after 1775 when England lost its American colony. Therefore, conviction and sentencing practices between 1718 and 1775 are unique and further analyses of decision-making in other counties across the same time-frame would enhance the understanding of judicial policies and practices in the mid-eighteenth century.

Identifying the true level of female participation in crime is masked by issues of the extent to which the exercise of coverture, leniency or 'chivalry' towards female offenders operated within the criminal justice system. A paternalistic view would account for the lower representation of women in the legal process because women were naïve or passive, easily misled and less capable of than men committing an offence. In contrast, the chivalry hypothesis is directed at the punishment a woman was likely to receive. Some historians argue that judges may have been reluctant to imprison women with children, who would then become a burden on the parish, while others argue that the exercise of chivalry existed, but only when women conformed to female stereotypes, that is, stole items of small value to support themselves or their children in times of need. Although there are few cases in which the children of a convict are mentioned, those that have been located provide evidence that justices and judges did not shy away from ordering a parent of either gender for transportation.

[33] See pp. 279-280.

If civil authority is founded on opinion, "general opinion" had to be treated with deference and managed with circumspection and, for that reason, the pardoning process of the eighteenth-century had to accommodate "general opinion".[34] Such views were particularly evident in the management of the food riots. The remarkable aspect was the restraint shown by those in authority in their responses to those who flouted the law and wreaked havoc in the community. The efficiency of justices for the East Riding in holding regular assizes of bread during the grain shortages of 1739/1740 and the restraint shown by the less well organised justices for the West Riding, provide evidence in support of Thompson's argument, that such actions had overwhelming popular consensus (at least amongst the masses) while those in authority demonstrated a deeply-felt conviction that in times of dearth prices ought to be regulated and agrarian capitalism restrained.[35]

One hypothesis mooted in this thesis is that the majority of people were acquitted because they were not guilty under the terms of the relevant statute or common law and/or because of some failure under the prevailing rules of evidence and procedure. Contemporary evidence to support this theory is rare, although Blackstone's observation that "It is better that ten guilty prisoners should escape than that one innocent suffer" points towards the importance of sound legal evidence at criminal trials.[36] Nevertheless, the potential impact of the 'Bloody Code' was not accepted without question and this thesis demonstrates that those involved in the court processes acted to mitigate the most severe elements of the new laws. Many offences which ought to have been dealt with at the assizes as a capital felony were kept within the lower sentencing jurisdiction of the quarter-sessions as the result of an unofficial arrangement whereby victim-prosecutors understated

[34] Paley, William M.A (1785, first edition) The principles of moral and political economy, London, p. 410-411.
[35] Thompson, E.P. (1971) 'The Moral Economy of the English Crowd in the Eighteenth Century', Past and Present, vol. 50, pp. 76-136, p. 112.
[36] Blackstone, William (1765, first edition) Commentaries on the Laws of England: Of Public Wrongs, vol. 4, Oxford: Clarendon Press, p. 358.

the value of goods stolen in indictments and pious juries passed partial verdicts. Nonetheless, it appears likely that decisions to understate a crime at any stage went to address the sentencing implications rather than matters of gender or guilt *per se*.

When it came to the pardoning process from a capital conviction, King identified seven main factors as likely to influence sentencing and pardoning decisions: youth or infirmity, good character and previous conduct, prospects of employment or reform, destitution of family, the possibility of innocence, nature and circumstances of crime, or respectability and background.[37] The problem with King's subjective categorisation is that some convicts would have displayed more than one characteristic, so that the element of gender, for example, may have been just one characteristic of a single, ageing woman in ill-health. The evidence of this thesis tends towards Gatrell's view that "political, economic and bureaucratic explanations of penal change" are more convincing than notions of sympathy and sensibility.[38] It favours the argument that failures to implement the full terms of the 'Bloody Code' occurred, not because of humanitarianism and sensibility, but to avoid the execution of an increasing number of men and women convicted of a capital offence, that was "neither acceptable nor possible".[39] In considering the social status of the parties, King placed the relevance of social background on judicial decision-making far lower down the scale than Hay.[40] Nevertheless, the evidence from a range of cases in Yorkshire is that the status of the defendant did influence the treatment of parties during the course of proceedings, possibly influenced the outcomes of some trials, while the

[37] King, Peter (March 1984) 'Decision-Makers and Decision-Making in the English Criminal Law, 1750-1800', The Historical Journal, vol. 27 (1), pp. 25-58, p. 56; King, Crime, Justice and Discretion, pp. 105, 301-315.
[38] Gatrell, V.A. (1996) The Hanging Tree: Execution and the English People 1770-1868, Oxford: Oxford University Press, p. 227.
[39] Emsley, Clive (2010, fourth edition, first published 1987) Crime and Society in England, 1750-1900, London: Pearson Longman, p. 267; and see, Gatrell, The Hanging Tree, pp. 20-21, 200-202.
[40] See pp. 100-101; King, 'Decision makers', p. 26; Hay, Douglas (1980) 'Crime and Justice in Eighteenth- and Nineteenth-Century England', Crime and Justice, vol. 2, pp. 45-84, p. 53.

relative status of defendants and their victims did play a role in the sentencing/pardoning decisions of some assize judges.

Although some historians point to the 'exceptional concentration' on the 'Bloody Code' by other social historians, it is an area yet to be fully surveyed or understood.[41] It was an important point in history as parliament took an increasingly greater role than the common law in stating what was or was not a criminal offence and determining the appropriate sentence. Regional variations were inevitable in the interpretation of the rule of law, given the role of local justices of the peace, coroners and juries, combined with the absence of central control, save for the biannual visits by circuit judges. Therefore, the role of circuit judges was important is ensuring that the rule of law was applied consistently across the country, as evidenced from notes in the minute books for Yorkshire when presiding circuit judges made legal observations for the benefit of both the defendant and the education of court officers.

Gatrell's suggestion that, by the later part of the eighteenth century, there was a new sense that women should be pitied not punished, coincides with the timing of a parliamentary paper to repeal the Concealment Act of 1624.[42] Even so, that approach had not gathered universal, male consensus and was subject to regional variations according to the nature of the offence committed. This thesis considers the gendered exercise of discretion within the judicial process at a particular point in time during the eighteenth century when traditional punishments such as branding and the death penalty (following a successful appeal) were replaced by orders for transportation to America for a term of seven years or more. The extent to which gendered leniency was exercised in the pre-trial process can only be imagined but once a complaint was brought within the formal court

[41] Lemmings, David (2000) Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century, Oxford: Oxford University Press, p. 3.
[42] Gatrell, The Hanging Tree, pp. 334-347.

process the evidence from Yorkshire is of greater leniency being shown to female offenders. Women were the greater beneficiaries of partial verdicts by petty juries at quarter sessions and assizes and of acquittals for a range of offences which might otherwise carry a capital sentence. Where the threat of a capital sentence was removed a higher proportion of female convicts were sentenced to shaming punishment by way of whipping and the pillory at quarter sessions. In contrast, male convicts were more frequently ordered for transportation by the lower court, although such generalisations reflect, in part, the nature of the offences more commonly committed by men and women and the sentencing options available. Women did face greater censure in the higher court when they were convicted of the more serious offences of burglary and homicide and they were more likely that their male counterparts to be punished by way of transportation, rather than by way of an order for physical chastisement and/or a term in gaol. Nevertheless, very few women in Yorkshire were capitally convicted, and only then in the circumstances of a petty treason where no recommendation for reprieve from the trial judge was possible. Although a woman convicted for a non-capital offence could not expect to rely on her gender to avoid separation from her family, the higher incidence of partial verdicts for women is likely to have saved many from hanging.

Postscript

On reviewing this thesis I am conscious that there are many questions left unanswered and other primary sources to be surveyed. A review of the manorial court records would be extremely useful in providing further evidence of local decision-making. A review of the reports of coroner's inquests scattered across the records of assizes, King's Bench and local repositories would help in better understanding of the indictment process in homicides, while an examination of records of women who died in childbirth (whether married or not) might reveal further evidence of the extent of child murders and abortion

beyond that associated with infanticide. An extended study of the long dureé of infanticide/concealment legislation between 1624 and 1803 would also clarify whether the reluctance of juries to convict under terms of the 1624 Act was a feature of earlier periods. Finally, reports of husbands and wives jointly identified as being involved in acts of murder would enhance our understanding of coverture, when married women failed to appear with their husbands as co-defendants at the assizes.

The recognizance process also requires further examination through a survey of material found across the records of assize, King's Bench and the exchequer and should, in particular, shed light on the extent to which failures to prosecute wrongful or malicious claims were punished by the forfeiture of bonds. A review of the records of King's Bench was outside the general remit of this thesis and a more thorough review of those records would also assist in obtaining a better understanding of the appeal process and build on work currently being undertaken by Ruth Paley and Henry Mares.[43]

What is offered here is one viewpoint on the relationship between the established rules of law, evidence and procedure which bound the judiciary and the exercise of gendered interpretation and discretion in applying those rules by those involved in the judicial process through the quarter sessions and assize courts. Greater understanding of the relationship between the history of law and legal practice to the human experience examined by social historians is necessary and it is hoped that this work will prompt others to develop that line of research.

[43] Paley, Dr Ruth, History of Parliament Trust (24 February 2012) 'Uncovering the History of Certiorari', Institute of Advanced Legal Studies, unpublished; Mares, Henry (24 February 2012) 'Criminal Informations of the Attorney General in King's Bench and Star Chamber', Institute of Advanced Legal Studies, unpublished.

APPENDIX A

Recognizance to prosecute.[44]

'Be it remembered that on the 29th day of January 1739 Mary Holdsmouth of Crookemore in the parish of Sheffield and Ryding aforesaid single woman personally appeared before me and did acknowledge to one to our Sovereign Lord the King the sume of Ten Pounds of lawful money of Great Britain to be levied upon her Goods and Chattells on condition following.

The condition of the Recognizance is such that if the said Mary Holdsmouth do personally appear att the next Gaol Delivery att the Assizes to be held for the County of York and there prefer a Bill against Clementina Grant and also give Evidence against her now a prisoner in the County Gaol and also to the Jurors that shall be on the trial of the said Clementina Grant and not depart the court without leave then this recognizance be void or else to remain in full force and virtue'.

[44] TNA ASSI 45/21/4/20A (1740), recognizance of Mary Houldsmouth in the matter of Clementina Grant, issued for the County of York.

APPENDIX B

Recognizances issued March 1739.[45]

Helen Ingham of Knaresborough, widow	£100
William Higgins of the same place, surgeon	£50
Thomas Ward of the same place, sadler	£50
That Helen Ingham answer for a felony	Discharged
William Jowcey of Leeds, yeoman	£40
James Tarrell of Barnsley, linen dyer	£20
Benjamin Northorp of Leeds, gent.	£20
That Jowcey appear and answer for a felony	Discharged
James Wells of Barnsley, linen dyer	£40
James Tarrell of Barnsley, linen dyer	£20
Peter Robinson of the City of York, shipwright	£20
That James Wells appear and answer for a felony	Discharged
Martha Grey of the City of York, singlewoman	£40
Benjamin Northorp of Leeds, gent.	£20
Jonathan Dickinson of York, carpenter	£20
That Martha Grey appear and answer for a felony	Discharged
John Beaumont of Westardsley, gent	£40
Benjamin Northorp of Leeds, gent.	£20
Jonathan Dickinson of York, carpenter	£20
That Beaumont appear and answer for a felony	Discharged
Lawrence Hoggart of Yafford, yeoman	£20
That he appear and answer	Discharged

[45] TNA ASSI 44/55, recognizances issued 10 March 1739 at the assizes for the county of Yorkshire.

Appendix 2.1

Legal Clerks, Yorkshire 1735 - 1775[46]

East Riding of Yorkshire		
Period of Office	**Clerks of the Peace**	**Notes and other appointments**
1713 - 1736	Richard Harland	Subject of a series of attempts to remove him from office, 1715-1717, for neglecting the laws against Papists, failing to make necessary returns for non-jurors and not residing within County; discharged from office April 1716; also accused of failing to keep proper Sessions records and of failing to deliver records "not being in process" to the *Custos Rotulorum*.
1736 - 1746	Robert Appleton the elder Of Beverley	Attorney; previously Deputy Clerk of the Peace and reappointed by his son when he retired as Clerk of the Peace
1746 - 1787	Robert Appleton the younger (died 1787)	Attorney; Clerk to Commissions of Sewers; previously Deputy Clerk of the Peace
	Deputy Clerks	
1726 - 1736	Robert Appleton the elder	Subsequently Clerk of the Peace
1736 - 1746	Robert Appleton the younger	Subsequently Clerk of the Peace
1747	Robert Appleton the elder	Reappointed by his son

West Riding of Yorkshire		
Period of Office	**Clerks of the Peace**	**Notes and other appointments**
1733 - 1759	Thomas Pulleyn (1701 to 1759)	Clerk to the Lieutenancy, 1757
1760 - 1765	Place Thomas (died 1765)	Clerk to the Lieutenancy
1765 - 1772	William Crowle (died 1772)	Clerk to the Lieutenancy
1773 - 1789	Richard Fenton (1708 to 1789)	Clerk to the Lieutenancy
	Deputy Clerks	
1729 - 1734	Richard Cowper	
1736	Alan Johnson	
1772	Thomas Sambourne of New Malton	

[46] Stephens, Sir Edgar (compiler) (1961) The Clerks of the Counties 1360-1960, The Society of Clerks of the Peace of Counties and of Clerks of County Councils, pp. 51-191.

North Riding of Yorkshire		
Period of Office	**Clerks of the Peace**	**Notes and other appointments**
1689 - 1736	Sir Henry Frankland bart of Thirkleby (1688 to 1736)	Son of Sir William nephew of Thomas Earl Fauconberg, Lord Lieutenant. Admitted Sidney Sussex College, Cambridge, 1684; entered Lincoln's Inn, 1685
1736 - 1762	James Preston the elder of Malton (died 1762)	Steward and Bailiff of the Borough; Land Steward and political agent of the Rockingham-Fitzwilliam interest; Captain of Militia. While dying begged Lord Rockingham to pass his offices to his son.
1762 - 1787	James Preston the younger of Malton (1745 to 1787)	Sworn Clerk of the Peace at age 16; Bailiff of the Borough; Admitted Gray's Inn 1765. J.P. 1769 and 1780; occasionally clerk or deputy clerk of Assize at York c. 1772-3.
	Deputy Clerks	
c.1723 to c. 1737	John Close Of Oulston in Coxwold	Had charge of a part-time Deeds Registry at Thirsk and Northallerton, 1726
1727	James Jackson of Furnival's Inn	Attorney of the Common Pleas
c.1743	Christopher Goulton of Husthwaite	Acted as solicitor to the quarter sessions
c.1757	William Conyers	
c.1761 - 1765	George Skepper (died 1732)	Deputy Sheriff, 1762; *de facto* Clerk of the Peace in minority of James Preston the younger; Clerk of the Monk-Bridge to Scarborough Turnpike Trust.
1765 - 1785	Robert Warter	

Appendix 3.1

Northern Circuit Assize Judges 1735-1745 and 1765-1775. [47]

Area	Year	Spring				Summer		
York, City and County	1735	Monday 11 March, 8 Geo II	Sir William Thomson, kt, B of Ex	Henry Wood, JG		Monday14 July, 9 Geo II	Sir William Lee kt, KG	Alexander Denton, JCP
Kingston upon Hull	1736					Thursday 29 July, 10 Geo II	Sir William Lee kt, KG	William Fortescue, B of Ex
York, City and County	1736	Monday 29 March – Monday 5 April, 9 Geo II	Sir Lawrence Carter kt, B of Ex	Henry Simon, JG		Monday 2 August –Monday 9, 10 Geo II	Sir William Lee kt, JhP	William Fortescue, B of Ex
York, City and County	1737	Monday 7 -Thursday 10 March, 10 Geo II	Sir William Lee kt	Henry Simon, JG		Monday 25 - Saturday 30 July, 11 Geo II	Sir William Chapple kt JhP	William Fortescue, B of Ex
York, City and County	1738	Monday 13 - Friday 23 March, 11 Geo II	Sir William Lee kt, KB	Sir Francis Page kt, KB		Monday 17 - Saturday 22 July, 12 Geo II	Sir William Chapple kt JhP	William Fortescue, B of Ex
York, City and County	1739	Monday 19 - Saturday 24 March, 12 Geo II	Sir William Lee kt, KB	Sir William Chapple, kt, KB		Monday 6 - Saturday 11 August, 13 Geo II	Sir William Chapple kt, JhP	Thomas Parker, B of Ex
York, City and County	1740	Monday 4 -Saturday 9 March, 13 Geo II	Sir William Lee kt, C.J. KB	Sir Lawrence Carter kt, B of Ex		Monday 21- Monday 28 July, 14 Geo II	Thomas Parker, Justice CP	James Reynolds B of Ex
York, City and County	1741	Monday 9 -Saturday 14 March, 14 Geo II	Sir John Wells kt, Justice C.P.	Sir Lawrence Carter kt, B of Ex		Monday 15 July, 15 Geo II		James Reynolds B of Ex
York, City and County	1742	Monday 15 - Saturday 20 March, 14 Geo II	James Reynolds B of Ex	Henry Simon, Justice to deliver gaol		Monday 2 - Saturday 7 August, 16 Geo II	Thomas Burnett, justice Court of CP	Simon Urlin, Serjeant at Law
York, City and County	1743	Monday 7 - Saturday 12 Mar, 16 Geo II	Sir Thomas Abney kt, B of Ex	Henry Simon, JG		Monday 18 - Saturday 23 July, 17 Geo II	Thomas Denison, KB	Thomas Birch, SL

[47] Information taken from gaol delivery and crown minute books found in TNA ASSI 41/ 2, 3, 5 and 6. Names highlighted in yellow indicate those judges identified as presiding over criminal trials; B of Ex = Baron of the Court of Exchequer; JG = Justice to deliver the gaol; JCP = Justice of the Court of Common Pleas; JhP = Justice to hold Pleas; KB = Justice of the King's Bench; C.J. KB = Chief Justice, King's Bench; SL = Serjeant at Law.

Area	Year	Spring				Summer		
York, City and County	1744	Monday 5-Saturday 10 March, 17 Geo II	Sir Lawrence Carter kt, B of Ex	Henry Simon, JG		Monday 9 - Monday 16 July, 18 Geo II	Thomas Burnett, CP	Charles Clark, B of Ex
Kingston upon Hull	1745					Wed 24-Friday 26 July, 19 Geo II	Edward Clive B of Ex	Thomas Birch, SL
York, City and County	1745	11 March - ?, 18 Geo II	Sir William Lee kt, CP	Martin Knight, CP		Monday 29 July-Saturday 3 August, 19 Geo II	Edward Clive, B of Ex	Thomas Birch, SL
York, City and County	1765	Saturday 16 - Tuesday 19 March, 5 Geo III	William, Lord Mansfield, CP	Sir Richard Adams, kt, B of Ex, and John Aspinal, SL		Saturday 20-Friday 26 July, 5 Geo III		Sir Joseph Yates, kt, JhP
York, City and County	1766	Saturday 16 - Tue 26 March, 6 Geo III	William, Lord Mansfield, CP	Henry Bathurst, Justice, CP		Saturday 12 - Tuesday 15 July, 6 Geo III	Henry Bathurst, CP	George Perrott, B of Ex
York, City and County	1767	Monday 30 March - 7 April, 7 Geo III	William, Lord Mansfield, CP	Henry Bathurst, CP		Saturday 1 - Thursday 6 August, 7 Geo III	Sir Henry Gould, kt, CP	George Perrott, B of Ex
York, City and County	1768	Wednesday 2 - Thursday 10 March, 8 Geo III	William, Lord Mansfield, CP	Henry Bathurst, CP		Saturday 16 - Thursday 21 July, 8 Geo III	Sir Henry Gould, kt, CP	Sir Joseph Yates, kt, JhP
Kingston upon Hull	1768					Wednesday 13 July, 8 Geo III	Sir Henry Gould, kt, CP	Sir Joseph Yates, kt, JhP
York, City and County	1769	Saturday 25 - Monday 27 March, 9 Geo III	William, Lord Mansfield, CP	Henry Bathurst, CP		Saturday 8 - Friday 14 July, 9 Geo III	Sir Henry Gould, kt, CP	George Perrott, B of Ex
York, City and County	1770	Saturday 24 - Saturday 31 March, 10 Geo III	William, Lord Mansfield, CP	Sir Henry Gould, kt, CP AND John Aspinal, SL		Saturday 4 - Friday 10 August, 10 Geo III	Sir Richard Aston, kt, JhP	George Perrott, B of Ex

Area	Year	Spring				Summer		
York, City and County	1771	Saturday 9 - Saturday 16 March, 11 Geo III	William, Lord Mansfield, CJ to hold pleas	Sir Henry Gould, kt, CP AND John Aspinal, SL		Saturday 16 - Wednesday from 20 July, 11 Geo III	Sir Henry Gould, kt, CP	Edward Willes, JhP
York, City and County	1772	Saturday 14 - Monday 23 March, 12 Geo III	William, Lord Mansfield, CP	Sir Henry Gould, kt, CP AND John Aspinal, SL		Saturday 1 - Monday 10 August, 12 Geo III	Sir Henry Gould, kt, CP	Edward Willes, JhP
Kingston upon Hull	1772					Friday 31 July - Saturday 1 August, 12 Geo III	Sir Henry Gould, kt, CP	Edward Willes, JhP
York, City and County	1773	Saturday 6 - Saturday 20 March, 13 Geo III	Sir Henry Gould, kt, CP	John Aspinal, SL		Saturday 20 - Friday 26 July, 13 Geo III	Sir Henry Gould, kt, CP	Sir William Blackstone, CP
York, City and County	1774	Saturday 5 - Friday 18 March, 14 Geo III	Sir Henry Gould, kt, CP	John Aspinal, SL	City	Saturday 16 - Monday 18 July, 14 Geo III	Sir Henry Gould, kt, CP	John Aspinal, SL
	1774				County	Saturday 16 - Friday 22 July, 14 Geo III	Sir Henry Gould, kt, CP	Sir William Blackstone, CP
Kingston upon Hull	1775					Fri 28 - Saturday 29 July, 16 Geo III	Sir Henry Gould, kt, CP	Sir William Henry Ashurst, kt, JhP
York, City and County	1775	Saturday 18 - Wednesday 29, 15 Geo III	Sir Henry Gould, kt, CP	John Aspinal, SL		Saturday 29 July, 15 Geo III	Sir Henry Gould, kt, CP	Sir William Henry Ashurst, kt, JhP

Appendix 3.2

Draft directions to Judges going on the Circuits[48]

1 That His Majesty's Proclamation published in the first year of His Reign for the encouragement of Piety and Virtue, and for the preventing and punishing of Vice, prophaneness and Immorality be thoroughly enforced and the several articles therein contained be at this time particularly and zealously [recommended] to and [passed] upon the [Magistrates Graced Juris and people]

2 That the Judges be careful to punish vice and prophaneness, and to encourage and excite in their charges the Justices of the Peace, and all other Magistrates to be diligent and active in doing the same.

3 That they shall do exhort and encourage the gentlemen of the several Counties, who are in the Commissions of the Peace, to act as justice of the peace for the support of His Majesty's Government, and the general good of the Country.

4 That Care be taken to put the Laws in strict execution against the atrocious crimes of murder and Robbery, more especially murders by poisoning, which are of late grown more frequent than formerly, and Robberies upon the highway and House-breaking; and against the Heinous Crimes of Perjury and Forgery which are at the greatest height.

5 That as one means of preventing the crying Sin of Perjury, the judges do consider and settle a method of administering oath to persons examined in Courts of questions, or making affidavits before them, with greater seriousness and solemnity.

6 That the judges do, as far as possible, make the Rule laid down by the late Act of Parliament for the better preventing the horrid crime of Murder, as to staying the Execution mentioned in that Act, the [Gender] of their Dissention in granting to offenders convicted of other Capital Felonies, (viz: To grant such Reprieves only on Cause when [some] other Causes shall appear from the nature and circumstances of such particular case.

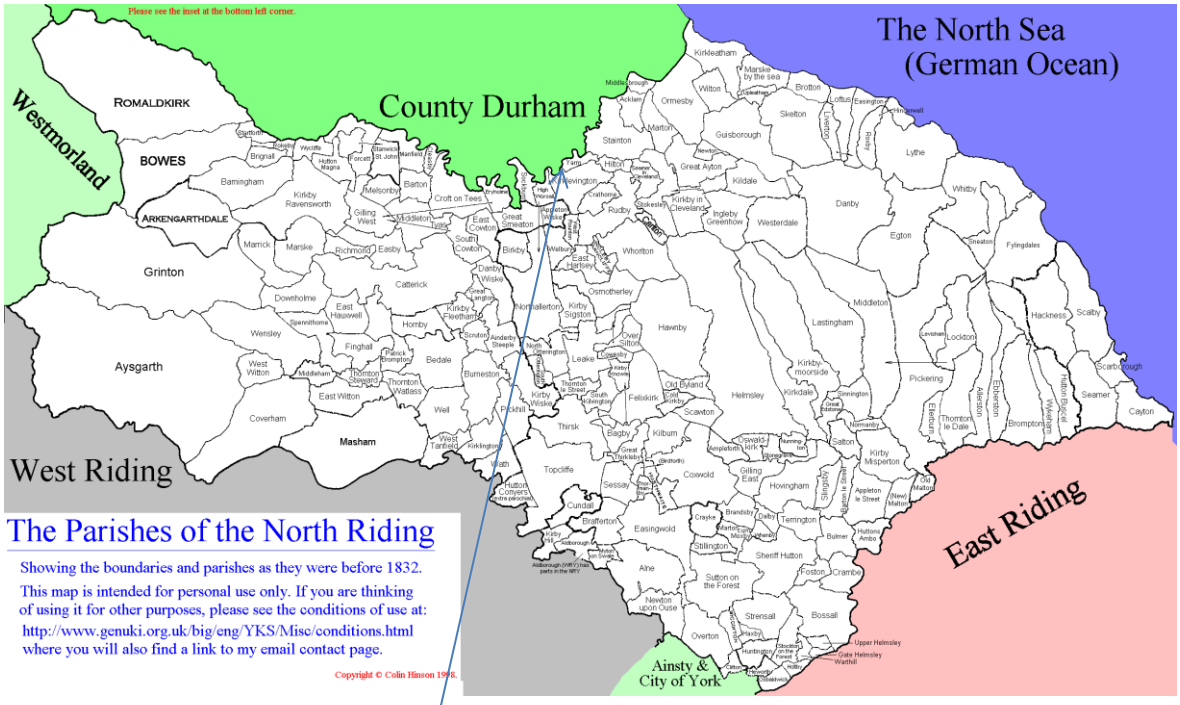
7 To see that the Laws be carefully executed against Crimes of a lower kind with which young offenders are apt to begin and from thence to proceed to crimes of a more enormous nature, and particularly to make due examples of person guilty of unlawful and excessive Gaming, or keeping or frequenting common Gaming or Bawdy houses or of rioting and disturbing the Publick Peace; or of breaking the Sabbath, or of […] a contempt of the public Worship of God.

8 To enquire into the State of the Goals and House of Correction in the Counties where the judge respectively hold their Assizes, and use their utmost Endeavours to reform such unlawful Practices and Abuses as may have crept into the same; and to direct the Grand Juries to enquire into all such unlawful practices and abuses and to present such Gaolers and Keepers of Houses of Correction as are guilty thereof to the end they may be punished according to Law.

[48] TNA SP 36/147/225, undated from the reign of George II, (1727-1760)

APPENDIX 7.1

Parish Map, North Riding of Yorkshire.[49]

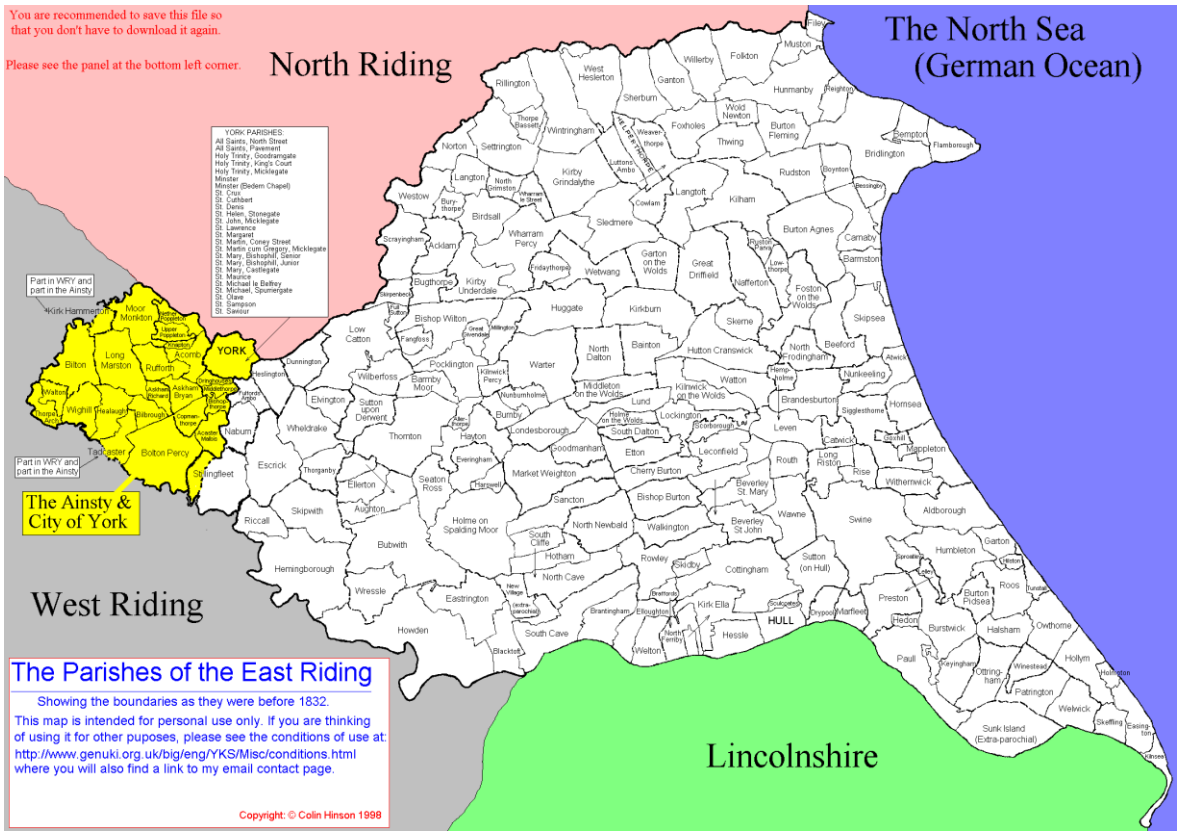


Yarm Norton Wooston Billingham

[49] http://www.genuki.org.uk/big/eng/YKS/Misc/Maps/NRYparishes.gif , accessed 26 August 2012.

APPENDIX 7.2

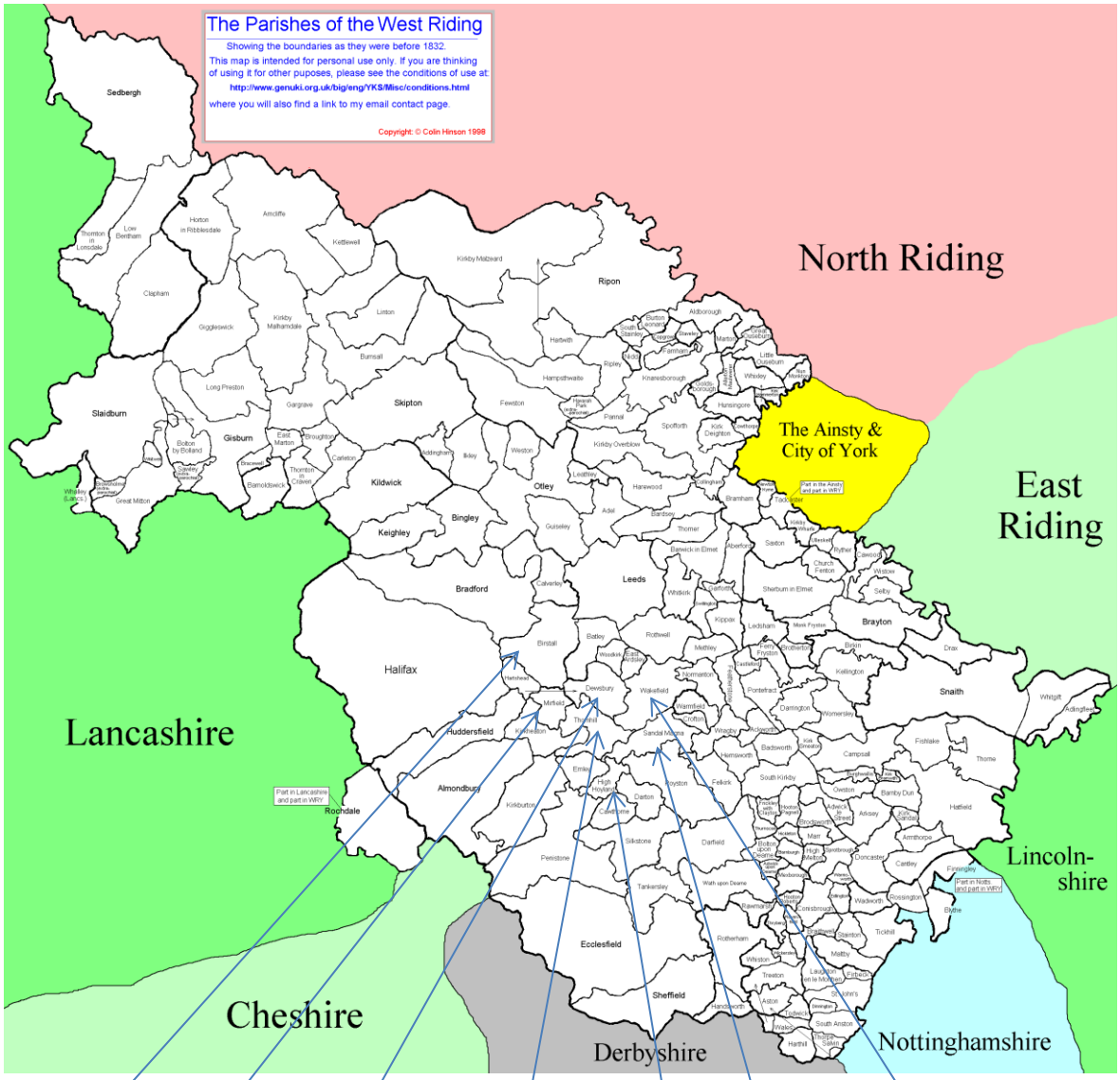
Parish Map, East Riding of Yorkshire.[50]



[50] http://www.genuki.org.uk/big/eng/YKS/Misc/Maps/ERYParishes.gif, accessed 26 August 2012.

APPENDIX 7.3

Parish Map, West Riding of Yorkshire.[51]



[51] http://www.genuki.org.uk/big/eng/YKS/Misc/Maps/WRYParishes.gif, accessed 26 August 2012.

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6 Edw., I (1277)	Statute of Gloucester.
13 Edw. I, Stat. (1285)	The Statute of Westminster.
13 Edw. I, Stat. c.34 (1285)	'Judgement of Life and Member for Rape'.
1 Edw. III (1327)	Justice of the Peace Act.
2 Edw. III, c.3 (1328)	Statute of Northampton.
25 Edw. III Stat. 2. c.7 (1351)	'Sessions of Justices shall be holden Quarterly or Oftener'.
25 Edw. III Stat. 5. c.2-4 (1351)	'Declaration what Offences shall be adjudged Treason'.
34 Edw. III. c.1 (1360)	'Who shall be Justices of the Peace. Their Jurisdiction over Offenders; Rioters; Barrators.
12 Ric. II c.10 (1388)	Act for the Commission of the Justices of the Peace.
13 Hen. IV c.7 (1411)	The Riot Act.
2 Hen V, stat 1. c.4 (1414)	Act requiring Justices of the Peace to hold Quarter Sessions.
8 Hen. VI, c.10 (1429)	Act for the processing of indictments and appeals.
10 Hen. VI, c.6 (1432)	Act for the processing of indictments and removal into the King's Bench.

21 Hen. VIII, c.7 (1529)	Act for the punishment of such servants as shall withdraw themselves and go away with their Master or Mistress's Casket and other Jewells or Goods.
23 Hen. VIII, c.15 (1531)	Act that the Defendant shall recover Costs against the Plainitiff, if the Plaintiff non-suited, or if the verdict pass against him.
25 Hen. VIII , c.6 (1533)	Buggery Act.
25 Hen. VIII, c.19 (1533-1534)	Act for the submission of the Clergy to the King.
37 Hen. VIII, c.8, s.2 (1545)	Act removing Benefit of Clergy from any person stealing a horse.
1 Edw. VI, c.12, s.9 (1547)	Privileges of Clergy and Sanctuary taken away in Murder, and other specified Offences specified.
5 and 6 Edw. VI, c.14 (1551-1552)	Act against Regrators, Forestallers and Engrossers.
1 &, 2 Ph. & M. c.13 (1554-55)	Bail Act.
2 & 3 Ph. & M. c.10 (1555-1556)	An Act to take the examination of prisoners. suspected of manslaughter or felony.
5 Eliz. I, c.17 (1562)	Vice of Buggery Act.
18 Eliz. I, c.7 (1575/1576)	Act to take away Clergy from offenders in Rape and Burglary.
27 Eliz. I, c.13 (1584-5)	Act for the following of hue and cry.
31 Eliz. I, c.12 (1589)	An Act to avoid Horse stealing.
39 Eliz. I, c.4 (1597)	The Vagabonds Act
43 Eliz. c.5 (1601)	An Act to prevent unnecessary expenses in suits of Law.
1 Jac. I, c.1, s.8 (1603)	Act to take away the Benefit of Clergy from some kind of Manslaughter.

4 Jac. I. c.3 (1606)	Costs Act.
7 Jac. I, c.7 s.2 (1609)	An Act for the punishing Deceit and Frauds committed by Sorters Kembers and Spinsters of Wool and Weavers of Woollen Yarn, 'Receivers punishable as Principals'.
7 Jac. I, c.24 (1609/1610)	An Acte for the king's most general and free Pardon.
21 Jac. I, c.6 (1623/24)	Act concerning Women convicted of small Felonies.
21 Jac. I, c.27 (1623/24)	Act to prevent the murthering of Bastard Children.
12 Ca. II, c.11 (1660)	An Act of Free and Generall Pardon Indemnity and Oblivion.
22 & 23 Ca. II, c.12 (1670/1671)	An Additional Act for ascertaining the Measures of Corne and Salt
22 & 23 Ca. II, c.25 (1670/1671)	Act for the better preservation of the Game, and for the securing of Warrens not inclosed, and the several Fishings of this Realm.
25 Ca. II, c.5 (1672)	An Act for the Kings Majestyes most Gracious, Generall and Free Pardon.
31 Ca. II, c.2 (1679)	Act for the better securing the Liberty of the Subject and for Prevention of Imprisonments beyond the Seas (the *Habeas Corpus* Act).
1 Wm & M., sess. ii, c.2 (1688)	An Act declaring the Rights and Liberties of the Subject.
2 Wm &M. c.10 (1689)	An Act for the king and Queens most Gracious Generall and Free Pardon.
3 Wm. & M., c.9 (1691)	Benefit of Clergy Act.

4 & 5 Wm. & M., c.8, s.2 (1692)	Act for encouraging the apprehending of Highway Men. Reward of £40 on taking a highwayman.
4 Wm. & M., c.18 (1692)	An Act to prevent malicious informations in the Court of the King's Bench.
6 & 7 Wm. III, c.20 (1694/5)	Act for the King's most gracious general and free pardon.
7 & 8 Wm. III, c.3 s. 1 (1695/6)	Act for regulating of Trials in Cases of Treason and Misprison. Admission of defence counsel and evidence.
10 and 11 Wm. III, c.23, s. 2 (1699)	Act to take away clergy from some offenders and to bring others to punishment.
1 Anne, Stat.2. c.9 s. 3 (1702)	Act for punishing Accessories to Felonies and Receivers of stolen Goods, etc. Witnesses for the defence in trials for treason or felony shall take an oath to tell the truth.
1 Anne, Stat.2. c.22 (1702)	Act for the more effectual preventing of Abuses and Frauds of Persons imployed in the working up the Woollen Linen Fustian Cotton and Iron Manufactures.
6 Anne, c.9 s. 4 (1706)	Act for punishing felons, etc. Reading not required of Persons praying Benefit of Clergy.
6 Anne c.16 (1706)	Act for the better preservation of the Game.
7 Ann c.22 (1708)	An Act for the Queens most gracious general and free Pardon.
12 Anne, c.7 (1713)	Act for the more effectual preventing and punishing Robberies that shall be committed in Houses.

1 Geo. I, c.5 (1715)	Act for Preventing Tumults and Riotous Assemblies.
3 Geo. I c.29 (1716)	An Act for the Kings most Gracious, General and Free Pardon.
4 Geo. I, c.11 (1718)	Act for the further Preventing Robbery, Burglary and other Felonies and for the more effectual Transportation of Felons.
6 Geo. I, c. 23 (1720)	Act for the further Preventing Robbery, Burglary and other Felonies and for the more effectual Transportation of Felons.
9 Geo. I, c.22 (1723)	The Waltham Black Act.
12 Geo. I, c.34, s.7 (1725)	Act to prevent unlawful Combinations of Workmen imployed in the Woollen Manufactures and for better payment of their Wages.
4 Geo. II, c.7 (1730)	Act for the better Regulation of Juries (Amendment).
8 Geo II, c.16, s. 11 (1735)	Act for the Amendment of the Law relating to Actions on the Statute of Hue and Cry.
11 Geo. II, c.22 (1737)	Act for punishing such persons as shall do injuries and violence to the persons or properties of His Majestey's subjects with intent to hinder the Exportation of corn.
13 Geo. II, c.24 (1739)	The Vagabonds Act.
13 Geo. II, c.8, s.2 (1740)	Act for the more effectual preventing of Abuses and Frauds of Persons imployed in the working up the Woollen Linen Fustian Cotton and Iron Manufactures (Amendment).

14 Geo. II, c.3 (1740)	Act to prohibit, for a Time therein limited, the exportation of Corn, Grain etc.
14 Geo. II, c.6 (1741)	Act to render the Laws more effectual for preventing the stealing and destroying of Sheep and other Cattle.
14 Geo. II, c.17 (1741)	Act to Prevent Delay of Cause after Issue Joined.
15 Geo. II, c.34 (1742)	Act to render the Laws more effectual for preventing the stealing and destroying of Sheep and other Cattle (Amendment).
22 Geo. II, c.24 (1749)	Act for remedying inconveniences which may happen by Proceedings in Actions on the Statutes of Hue and Cry.
22 Geo. II, c.27, ss.1-2 (1749)	Act for the more effectual preventing of Frauds and Abuses committed by Persons employed in the Manufacture of Hats, and in the Woollen, Linen, etc.
25 Geo. II, c.29 (1752)	Act for giving a proper Reward to Coroners.
25 Geo. II, c.36 (1752)	Act for better preventing Thefts and Robberies.
25 Geo. II, c.37 (1752)	Act for better preventing the horrid crime of murder.
27 Geo II c.3 (1754)	Act for securing the expenses of Constables … and for allowing the Charges of poor Persons bound to give Evidence against Felons.
17 Geo. III, c.35 (1777)	Act for preventing unlawful Combinations of Workmen employed in the Silk Manufacture: 'The Worsted Acts'.
18 Geo. III c.19 (1778)	Act for the payment of costs to parties.
30 Geo. III, c.48 (1790)	Act for discontinuing the Judgement which has been

	required by Law to be given against Women convicted of certain Crimes, and substituting another Judgement in lieu thereof.
39 and 40 Geo. III, c.87 (1799)	Act for the more effectual Prevention of Depredations on the River Thames (and theft from a master).
43 Geo. III, c.58 (1803)	Act to prevent the murthering of Bastard Children (Amendment).
48 Geo. III, c.129 (1808)	The Larceny Act.
1 Geo. IV, c.57 (1820)	Act to abolish the Punishment of public Whipping on Female Offenders.
7 & 8 Geo. IV, c.28 (1827)	Criminal Law Act.
7 & 8 Geo. IV, c.31 (1827)	Remedies Against the Hundred (England).
9 Geo. IV, c.31 (1828)	Act for consolidating and amending the Statutes in England relative to Offences Against the Person.
6 & 7 Wm. IV, c.114 (1836)	Act for enabling Persons indicted of Felony to make their Defence by Counsel or Attorney.
11 & 12 Vict., c.43 (1848)	Act, to facilitate the Performance of the Duties of Justice of the Peace out of Sessions.
14 & 15 Vict., c.99 (1851)	Act to amend the Law of Evidence.
24 & 25 Vict., c.100, s. 61 (1861)	Offences against the Person Act.
42 & 43 Vict., c.22 (1879)	Prosecution of Offences Act.
30 &31 Vict., c.35, s. 3(1898)	Act to remove some Defects in the Administration of the Criminal Law, ‘Accused Person to be asked by Justice if he desire to call Witnesses’.
16 & 17 Geo. V, c.59 (1926)	Coroners (Amendment) Act.
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